

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

**IN THE MATTER OF:**

**Mosaic Potash Hersey, LLC  
Hersey, Michigan**

**Respondent.**

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)  
) **Docket No. SDWA-05-2006-0005**  
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**COMPLAINANT'S PREHEARING EXCHANGE**

The Director, Water Division Region 5, United States Environmental Protection Agency  
in accordance with the March 8, 2007, Prehearing Order issued by the Presiding Officer, Marcy  
A. Toney, respectfully submits the following Complainant's Prehearing Exchange pursuant to  
Section 22.19 of the Consolidated Rules of Practice Governing the Administrative Assessment of  
Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation,  
Termination or Suspension of Permits, codified at 40 C.F.R. § 22.19.

**I. EXPECTED WITNESSES**

This section includes the names of witnesses it intends to call, together with a brief  
narrative summary of each witness' expected testimony as required by Paragraph 1(A) of the of  
the Presiding Officer's Prehearing Order.

1. William Bates: William Bates is an environmental scientist with the  
Underground Injection Control Branch, Water Division, EPA Region 5. His duties include  
serving as an inspector in the investigation of underground injection well violations under the

Safe Drinking Water Act (SDWA). Mr. Bates' expected testimony may include his determination, based on review of U.S. EPA records, that Respondent did not perform Part II mechanical integrity demonstrations for 19 underground injection wells as required by Underground Injection Control Permit No. MI-133-3G-A002. If necessary, Mr. Bates will provide testimony sufficient to authenticate certain exhibits contained in this prehearing exchange.

In addition, Mr. Bates may provide testimony as to how the penalty proposed in the Complaint was calculated applying the statutory penalty factors, U.S. EPA's "Revised UIC Region 5 Administrative Order Penalty Policy", and the BEN computer model as explained by the BEN User's Manual (1999), and as set forth in greater detail in Section V, below.

2.     Patrick Saieh:         Patrick Saieh is a permit writer for the underground injection program at U.S. EPA Region 5. Mr. Saieh reviewed and approved the issuance of Underground Injection Control Permit No. MI-133-3G-A002 in 1992. Since that time he has been responsible for review of all matters under Underground Injection Control Permit No. MI-133-3G-A002. Mr. Saieh may testify regarding the records received by U.S. EPA Region 5 concerning Underground Injection Control Permit No. MI-133-3G-A002. If necessary, Mr. Saieh may provide testimony sufficient to authenticate certain exhibits contained in this prehearing exchange, including the permits (Complainant's Exhibits 1 and 2), Authorizations to Inject (Complainant's Exhibit 3) and temperature logs (Complainant's Exhibit 4).

3.     Lisa Perenchio:         Lisa Perenchio is the Chief of the Direct Implementation Section of the UIC Branch, Water Division, U.S. EPA Region 5, responsible for the receipt and

processing of UIC permits for facilities in U.S. EPA Region 5 states. Ms. Perenchio may testify regarding the history and status of Underground Injection Control Permit No. MI-133-3G-A002.

## II. DOCUMENTS AND EXHIBITS

This section includes copies of documents and exhibits which Complainant intends to introduce into evidence at the hearing as required by Paragraph 1(B). of the of the Presiding Officer's Prehearing Order.

Complainant's Exhibit 1: Underground Injection Control Class III Area Permit No. MI-133-3G-A002 Permit No. dated April 15, 1992, effective May 15, 1992, issued by Director, Water Division, U.S. EPA Region 5 to Kalium Chemicals, Ltd for the Hersey Potash Project.

Complainant's Exhibit 2: Underground Injection Control Minor Permit Modification Class III Area Permit No. MI-133-3G-A002, dated December 15, 1993, effective May 15, 1992, issued by Director, Water Division, U.S. EPA Region 5 to Kalium Chemicals, Ltd for the Hersey Potash Project.

Complainant's Exhibit 3: Authorizations to Inject for Class III Area Permit No. MI-133-3G-A002.

Complainant's Exhibit 4: U.S. EPA Reviews of Temperature Logs submitted by Mosaic USA, LLC for Permit No. MI-133-3G-A002.

Complainant's Exhibit 5: Summary table showing identity, date of construction and date of mechanical integrity tests for each well authorized in Permit No. MI-133-3G-A002.

Complainant's Exhibit 6: Revised UIC Region 5 Administrative Order Penalty Policy, September 21, 1994.

Complainant's Exhibit 7: Penalty calculation worksheets

Complainant's Exhibit 8: Worksheets for calculation of the economic benefit of noncompliance using the BEN computer model.

Complainant's Exhibit 9: Invoice from Michigan Wireless Services, Inc. to Mosaic Potash, November 27, 2006, showing "temperature/gamma ray logs project price"

Complainant's Exhibit 10: U.S. EPA memorandum of May 9, 1997, "Modifications to EPA Penalty Policies to Implement the Civil Monetary Penalty Inflation Rule (Pursuant to the Debt Collection Improvement Act of 1996)

Complainant's Exhibit 11: U.S. EPA memorandum of September 21, 2004, "Modifications to EPA Penalty Policies to Implement the Civil Monetary Penalty Inflation Rule (Pursuant to the Debt Collection Improvement Act of 1996, Effective October 1, 2004)

Complainant's Exhibit 12: United States Security and Exchange Commission Form 10-K Annual Report for The Mosaic Company for the fiscal year ending May 31, 2006. The report can be found at the SEC web site, [www.secinfo.com/d14D5a.v56pd.htm](http://www.secinfo.com/d14D5a.v56pd.htm). Since the report is voluminous, created by the Respondents, and publicly accessible on the internet, Complainant requests leave to refrain from appending a hard copy of the report to its prehearing exchange, but will do so if instructed to by the Presiding Officer.

Complainant reserves the right to add additional witnesses and exhibits to rebut Respondent's testimony.

### III. JUDICIAL NOTICE

Complainant hereby requests the Presiding Officer to take judicial notice of the following:

1. The Safe Drinking Water Act ("SDWA"), 42 U.S.C. § 300h, et. seq.,

and the regulations promulgated thereunder.

2. The Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, as amended, including 61 Fed. Reg. 9064, March 6, 1996.

#### IV. LOCATION AND LENGTH OF HEARING

As required by Paragraph 1(C) of the Presiding Officer's Prehearing Order, Complainant requests that the hearing in this matter be held at a suitable location in or near Chicago, Illinois. U.S. EPA's Region 5 office and Respondent's counsel's office are located in Chicago, Illinois.

Complainant anticipates needing approximately four to eight hours to present its direct case.

#### V. DETERMINATION OF THE PROPOSED PENALTY AMOUNT

U.S. EPA may assess a penalty of up to \$10,000 per day of violation for violations prior to March 15, 2004, up to a maximum administrative penalty of \$127,500. For violations after March 15, 2004 penalties of up to \$11,000 per day up to a total of \$157,500 may be assessed. The penalty is computed based upon the six factors delineated at Section 1423(c)(4)(B) of the SDWA, 42 U.S.C. § 300h-2(c)(4)(B): (i) the seriousness of the violation; (ii) the economic benefit (if any) resulting from the violation; (iii) any history of such violations; (iv) any good faith efforts to comply with the applicable requirements; (v) the economic impact of the penalty on the violator; and (vi) such other matters as justice may require. These factors are embodied within the "Region 5, Underground Injection Control, Administrative Order Penalty Policy" (September 21, 1994), which was used to calculate the penalty. As applied to

this case, the six factors affect the penalty calculation as follows:

**Seriousness of the Violation: Failure to Demonstrate Mechanical Integrity ("MI")**

The Permit under which Respondent is operating underground injection wells requires that Respondent demonstrate that the wells have mechanical integrity, that is, no significant leak in the casing, tubing or packer; and no significant movement into an USDW through vertical channels adjacent to the injection well bore, at least once every 5 years. Mechanical integrity is one of the cornerstones of an effective UIC program because it is the simplest and most appropriate method to show mechanical soundness of the well both in construction and operation and lack of migration of fluids to underground sources of drinking water. A leak in the casing, tubing or packer of a well or any fluid movement adjacent to the wellbore, may cause contamination of an underground source of drinking water. Even if a well is not currently operating and is temporarily abandoned, the mechanical integrity must be demonstrated because the well may function as a conduit for injected or formation fluids and has the potential to contaminate a USDW. Therefore, failing to demonstrate mechanical integrity by providing temperature logs for any one of the 19 wells presents a serious potential for harm to the environment. The penalty policy considers failures to conduct mechanical integrity tests to be the most serious type of violation, with a suggested penalty for a "high seriousness level" of violation from Table II in the range of \$1,000-\$10,000, before inflation adjustments. Here, consistent with the statutory factors and the penalty policy, \$2,009 was chosen to reflect the large number of wells in violation. The 19 wells were out of compliance with the mechanical integrity requirements for various lengths of time, but most had never had the Part II test performed since installation. A duration of 60 months was applied in calculating the gravity component of the

penalty, per the Policy.

**Economic Benefit (EB):**

The Respondent gained an economic benefit by delaying the running of temperature logs to demonstrate mechanical integrity of the wells. The economic benefit was calculated by using the actual cost to Respondent in 2007 to run a temperature log (\$6,120) inputted to the U.S. EPA's BEN computer model using the model's default assumptions.

**History of Previous Violations:**

There is no history of previous violations. Therefore, as provided in the Penalty Policy, the penalty is not being increased for this factor.

**Good Faith Efforts to Comply with the Applicable Requirements:**

The Penalty Policy states that the penalty should be reduced for this statutory factor only if the violator made efforts to comply prior to the initiation of the enforcement action. Here, although Respondent has begun efforts to come into compliance by running temperature logs, these efforts did not begin until after the complaint was filed. Therefore, the penalty was not reduced for this factor.

**Economic Impact of Penalty on the Violator:**

U.S. EPA is unaware of any facts indicating that imposition of the proposed penalty would unfairly or unduly affect Respondent's economic health. An examination of the Respondent's Annual Report and 10K filings does not indicate that a penalty of this magnitude would have any significant economic impact on the company's operations.

**Other Factors as Justice May Require:**

The penalty was calculated according to the Region 5 UIC Penalty Policy and took into account the statutory factors as set forth above. The total penalty calculated, including gravity, statutory inflation adjustments, and economic benefit of noncompliance, exceeds the statutory maximum of \$157,500. The penalty was therefore adjusted downward to the maximum allowed by statute in an administrative case. The penalty for these violations should emphasize to the Respondent the importance of maintaining its wells according to the conditions delineated in its permit and should act as a deterrent for future neglect of these necessary requirements. The final penalty of **\$157,500** satisfies both requirements. Complainant is unaware of any other unique factors which would cause a reexamination of the penalty calculation.

Based upon the factors set forth at Section 1423(c)(4)(B) of SDWA, 42 U.S.C. § 300h-2(c)(4)(B), Complainant proposes that Respondent be assessed a civil penalty of \$157,500.



## VI. RESERVATION OF RIGHTS

Complainant respectfully reserves the right to call all witnesses called by the Respondent; to recall any of its witnesses in rebuttal, and to modify or supplement the names of witnesses and exhibits prior to the Adjudicatory Hearing, pursuant to 40 C.F.R. Part 22, and upon adequate notice to the Respondents and the Presiding Officer.

Respectfully submitted,

U.S. Environmental Protection Agency

BY: John H. Tielsch  
John H. Tielsch  
Associate Regional Counsel

U.S. Environmental Protection Agency  
Region V (C-14J)  
77 West Jackson Blvd.  
Chicago, IL 60604

(312) 353-7447

In the Matter of Mosaic Potash Hersey, LLC  
Docket No. SDWA-05-2006-0005


CERTIFICATE OF SERVICE

I hereby certify that on the 16 day of April, 2007, I filed the original and one copy of this Prehearing Exchange and its attachments with Sonja Brooks, Regional Hearing Clerk, EPA Region V, 77 West Jackson Blvd., Chicago, Illinois 60604, and mailed a copy of the Prehearing Exchange with attachments by Pouch Mail to:

Marcy A. Toney  
Presiding Officer  
U.S. Environmental Protection Agency  
77 W. Jackson Blvd. (C-14J)  
Chicago, IL 60604

and mailed a copy of the Prehearing Exchange with attachments by certified mail to:

Byron F. Taylor  
Sidley Austin LLP  
One South Dearborn Street  
Chicago, IL 60603

A handwritten signature in cursive script, appearing to read "Elizabeth Burato", written in black ink.





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

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REPLY TO THE ATTENTION OF:

UNDERGROUND INJECTION CONTROL CLASS III AREA PERMIT

Permit Number: MI-133-3G-A002

Project Name : Hersey Potash Project

Pursuant to the provisions of the Safe Drinking Water Act, as amended (42 U.S.C. 300f et seq., commonly known as the SDWA) and implementing regulations promulgated by the United States Environmental Protection Agency (USEPA) at Parts 124, 144, 146 and 147 of Title 40 of the Code of Federal Regulations (CFR), Kalium Chemicals, Ltd. of Rolling Meadows, Illinois is authorized to operate six existing and two proposed solution mining injection wells located in Michigan, Osceola County, in a permit area limited to that described in Part III(D) of this permit. Injection shall be limited to the A-1 Evaporite between 7479 and 7896 feet, upon the express condition that the permittee meet the restrictions set forth herein. The names and locations of wells authorized under this permit and a map of the permit area are provided in Part III(D) of this permit. Injection shall not commence into any newly drilled or converted well until the operator has received authorization in accordance with Part I(E)(11) of this permit. Additional injection wells may be constructed and operated within the permit area provided that the permittee notifies the Director prior to construction and all permit requirements are met.

All references to 40 Code of Federal Regulations are to all regulations that are in effect on the date that this permit is effective.

This permit shall become effective on MAY 15 1992 and shall remain in full force and effect during the operating life of the field, unless this permit is otherwise revoked, terminated, modified or reissued pursuant to 40 CFR 144.39, 144.40 and 144.41. This permit shall also remain in effect upon delegation of primary enforcement responsibility to the State of Michigan unless that State chooses to adopt this permit as a State permit. This permit will be reviewed at least every five (5) years from the effective date specified above.

Signed and dated: 4/15/1992

Dale S. Bryson  
Dale S. Bryson  
Director, Water Division

PART I

GENERAL PERMIT COMPLIANCE

A. EFFECT OF PERMIT

The permittee is allowed to engage in underground injection in accordance with the conditions of this permit. The underground injection activity, otherwise authorized by this permit or rule, shall not allow the movement of fluid containing any contaminant into underground sources of drinking water, if the presence of that contaminant may cause a violation of any Primary Drinking Water Regulation found in 40 CFR Part 142 or may otherwise adversely affect the health of persons. Any underground injection activity not specifically authorized in this permit or otherwise authorized by permit or rule is prohibited. Issuance of this permit does not convey property rights of any sort or any exclusive privilege; nor does it authorize any injury to persons or property, any invasion of other private rights, or any infringement of State or local law or regulations. Compliance with the terms of this permit does not constitute a defense to any action brought under Section 1431 of the Safe Drinking Water Act (SDWA), or any other law governing protection of public health or the environment.

B. PERMIT ACTIONS

This permit may be modified, revoked and reissued, or terminated for cause as specified in 40 CFR 144.39, 144.40, and 144.41. The filing of a request for a permit modification, revocation and reissuance, termination, or the notification of planned changes or anticipated noncompliance on the part of the permittee does not stay the applicability or enforceability of any permit condition.

C. SEVERABILITY

The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances and the remainder of this permit shall not be affected thereby.

D. CONFIDENTIALITY

In accordance with 40 CFR Part 2 and Section 144.5, any information submitted to the USEPA pursuant to this permit may be claimed as confidential by the submitter. Any such claim must be asserted at the time of submission by stamping the words "confidential business information" on each page containing such information.

If no claim is made at the time of submission, USEPA may make the information available to the public without further notice. If a claim is asserted, the validity of the claim will be assessed in accordance with the procedures in 40 CFR Part 2 (Public Information). Claims of confidentiality for the following information will be denied:

- (1) The name and address of the permittee; and,
- (2) Information which deals with the existence, absence or level of contaminants in drinking water.

#### E. DUTIES AND REQUIREMENTS

1. Duty to Comply - The permittee shall comply with all conditions of this permit, except to the extent and for the duration such noncompliance is authorized by an emergency permit pursuant to 40 CFR 144.34. Any permit noncompliance constitutes a violation of the SDWA and is grounds for enforcement action, permit termination, revocation and reissuance or modification.
2. Penalties for Violations of Permit Conditions - Any person who operates these wells in violation of permit conditions is subject to civil penalties, fines, and other enforcement action under the SDWA and may be subject to such actions under the Resource Conservation and Recovery Act. Any person who willfully violates a permit condition may be subject to criminal prosecution.
3. Continuation of Expiring Permits
  - (a) Duty to Reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must submit a complete application for a new permit at least 180 days before this permit expires.
  - (b) Permit Extensions. The conditions of an expired permit may continue in force in accordance with 5 U.S.C. 558 (c) and 40 CFR 144.37.
  - (c) Effect. Permits continued under 5 U.S.C. 558 (c) and 40 CFR 144.37 remain fully effective and enforceable.
  - (d) Enforcement. When the permittee is not in compliance with the conditions of the expiring or expired permit the Director may choose to do any or all of the following:
    - (i) Initiate enforcement action based upon the permit which has been continued;

- (ii) Issue a notice of intent to deny the new permit. If the permit is denied, the owner or operator would then be required to cease the activities authorized by the continued permit or be subject to enforcement action for operation without a permit;
  - (iii) Issue a new permit under 40 CFR Part 124 with appropriate conditions; or
  - (iv) Take other actions authorized by Underground Injection Control regulations.
- (e) State Continuation - A USEPA permit does not continue in force beyond its expiration date under Federal law if at that time a State has primary enforcement responsibility under the SDWA. A State authorized to administer the UIC program may continue either USEPA or State-issued permits until the effective date of the new permits, if State law allows. Otherwise, the facility or activity is operating without a permit from the time of expiration of the old permit to the effective date of the State-issued new permit. Furthermore, if the State does not continue the USEPA permit upon obtaining primary enforcement responsibility, the permittee must obtain a new State permit or be authorized to inject by State rule or he will be injecting without authorization.
4. Need to Halt or Reduce Activity not a Defense - It shall not be a defense for a permittee in an enforcement action to state that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.
5. Duty to Mitigate - The permittee shall take all reasonable steps to minimize or correct any adverse impact on the environment resulting from noncompliance with this permit.
6. Proper Operation and Maintenance - The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of the permit.

7. Duty to Provide Information - The permittee shall furnish to the Director, within thirty (30) days, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Director, upon request, copies of records required by this permit to be retained.
8. Inspection and Entry - The permittee shall allow the Director, or an authorized representative, upon the presentation of credentials and other documents as may be required by law to:
  - (a) Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records are kept under the conditions of this permit;
  - (b) Have access to and copy, at reasonable times, any records that must be retained under the conditions of this permit;
  - (c) Inspect at reasonable times any facilities, equipment (including monitoring equipment), practices, or operations regulated or required under this permit; and
  - (d) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the SDWA, any substances or parameters at any facilities, equipment or operations regulated or required under this permit.
9. Records
  - (a) The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, and copies of all records required by this permit, for a period of at least three (3) years from the date of the sample, measurement or report. The permittee shall also maintain records of all data required to complete this permit application and any supplemental information submitted under 40 CFR 144.27, 144.28 and 144.31. These periods may be extended by request of the Director at any time by written notice to the permittee.
  - (b) The permittee shall retain records concerning the nature and composition of all injected fluids until three (3) years after the completion of plugging and abandonment of the last operating injection well covered under this permit. Such plugging and abandonment shall be conducted in accordance with the plugging and abandonment plan, contained in Part III(B) of this permit. The owner or operator shall



continue to retain the records after the three (3) year retention period unless he delivers the records to the Regional Administrator or obtains written approval from the Regional Administrator to discard the records.

(c) Records of monitoring information shall include:

- (i) The date, exact place, and the time of sampling or measurements;
- (ii) The individual(s) who performed the sampling or measurements;
- (iii) A precise description of both sampling methodology and the handling of samples;
- (iv) The date(s) analyses were performed;
- (v) The individual(s) who performed the analyses;
- (vi) The analytical techniques or methods used; and,
- (vii) The results of such analyses.

10. Notification Requirements

- (a) Planned Changes - The permittee shall notify and obtain the Director's approval at least thirty (30) days prior to any planned physical alterations or additions to the permitted facility, or changes in the injection fluids. Within ten (10) days prior to injection, an analysis of new injection fluids shall be submitted to the Director in accordance with Parts II(B) (2) and II(B) (3) of this permit.
- (b) Anticipated Noncompliance - The permittee shall give at least thirty (30) days advance notice to the Director for his/her approval of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.
- (c) Transfer of Permits - This permit is not transferrable to any person except after notice is sent to the Director at least thirty (30) days prior to transfer and the requirements of 40 CFR §144.38 have been met. The Director may require modification or revocation of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the SDWA.

- (d) Compliance Schedules - Reports of compliance or non-compliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted to the Director no later than thirty (30) days following each schedule date.
- (e) Twenty-Four (24) Hour Reporting
  - (i) The permittee shall report to the Director any noncompliance which may endanger health or the environment. This information shall be provided orally within twenty-four (24) hour from the time the permittee becomes aware of the circumstances, and shall include the following information:
    - (a) Any monitoring or other information which indicates that any contaminant may cause an endangerment to an underground source of drinking water; or,
    - (b) Any noncompliance with a permit condition or malfunction of the injection system which may cause fluid migration into or between underground sources of drinking water.
  - (ii) A written submission shall also be provided as soon as possible but no later than five (5) days from the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance.
- (f) Other Noncompliance - All other instances of noncompliance shall also be reported by the permittee in accordance with Part I(E)(10)(e)(i) and (ii) of this permit.
- (g) Other Information - If or when the permittee becomes aware that the permittee failed to submit any relevant facts in the permit application, or submitted incorrect information in a permit application or in any report to the Director, the permittee shall promptly submit such facts or corrected information in accordance with 40 CFR 144.51 (1)(8).

- (h) Report on Permit Review - Within thirty (30) days of receipt of the final issued permit, the permittee shall report to the Director that the permittee has read and is personally familiar with all terms and conditions of this permit.
11. Commencing Injection - The permittee shall not commence injection into any newly drilled or converted well until:
- (a) Formation data and injection fluid analysis have been submitted in accordance with Part II(A) (5) and II(B) (2), respectively;
  - (b) A report on any logs and tests required under Part II(A) (4) of this permit has been submitted.
  - (c) Mechanical integrity of the well has been demonstrated in accordance with Part I(E) (19);
  - (d) Any required corrective action has been performed in accordance with Parts I(E) (18) and III(C); and,
  - (e) Construction is complete and the permittee has submitted to the Director, by certified mail with return receipt requested, a notice of completion of construction using EPA Form 7520-10, a plugging and abandonment plan, a copy of the State permit and either:
    - (i) The Director has inspected or otherwise reviewed the new injection well and finds it is in compliance with the conditions of the permit; or,
    - (ii) The permittee has not received, within thirteen (13) days of the date of the Director's receipt of the report required above, notice from the Director of his or her intent to inspect or otherwise review the new injection well, in which case prior inspection or review is waived and the permittee may commence injection.
12. Signatory Requirements - All reports or other information requested by the Director shall be signed and certified according to 40 CFR 144.32.
13. Notice of Plugging and Abandonment - The permittee shall notify the Director at least forty-five (45) working days before conversion or abandonment of any injection well covered under this permit.

14. Plugging and Abandonment. The permittee shall plug and abandon any well covered under this permit consistent with 40 CFR 146.10, as provided for in the plugging and abandonment plan contained in Part III(B) of this permit. Within sixty (60) working days after plugging a well, or at the time of the next quarterly report (whichever is shorter), the permittee shall submit a report to the Director. The report shall be certified as accurate by the person who performed the plugging operation, and shall consist of either:
  - (a) A statement that the well was plugged in accordance with the plan previously submitted to the Director; or
  - (b) If the actual plugging differed from the approved plan, a statement defining the actual plugging and explaining why the Director should approve such deviation. Any deviation from a previously approved plan which may endanger underground sources of drinking water is cause for the Director to require the operator to replug the well.
15. Inactive Wells. After cessation of injection for two (2) years the permittee shall plug and abandon a well in accordance with the plan and 40 CFR 144.52 (a) (6) unless the permittee has:
  - (a) Provided notice to the Director; and
  - (b) Described actions or procedures, which are deemed satisfactory by the Director, that the permittee will take to ensure that the well will not endanger underground sources of drinking water during the period of temporary abandonment. These actions and procedures shall include compliance with the technical requirements applicable to active injection wells unless waived, in writing, by the Director.
16. Financial Responsibility - The permittee shall maintain financial responsibility and resources to plug and abandon the underground injection wells in accordance with 40 CFR 144.52(a) (7) as provided in Attachment R of the administrative record corresponding to this permit action which is hereby incorporated by reference as if it appeared fully set forth herein. The permittee shall not substitute an alternative demonstration of financial responsibility from that which the Director has approved, unless the permittee has previously submitted evidence of that alternative demonstration to the Director and the Director has notified the permittee in writing that the alternative demonstration of financial responsibility is acceptable. The financial responsibility mechanism shall be updated periodically, upon request of the Director, except when

Financial Statement Coverage is used as the financial mechanism; this coverage must be updated on an annual basis. If additional wells are to be constructed under the conditions of this permit, the permittee shall increase the amount of financial assurance prior to beginning construction, to cover the additional cost of plugging and abandonment.

17. Insolvency

- (a) In the event of the bankruptcy of the trustee or issuing institution of the financial mechanism, or a suspension or revocation of the authority of the trustee institution to act as trustee or the institution issuing the financial mechanism to issue such an instrument, the permittee must submit an alternative demonstration of financial responsibility acceptable to the Director within sixty (60) days after such event. Failure to do so will result in the termination of this permit pursuant to 40 CFR 144.40(a)(1).
- (b) An owner or operator must also notify the Director by certified mail of the commencement of voluntary or involuntary proceedings under Title 11 (Bankruptcy), U.S. Code, naming the owner or operator as debtor, within ten (10) business days after the commencement of the proceeding. A guarantor of a corporate guarantee must make such a notification if he or she is named as debtor, as required under the terms of the guarantee.

18. Corrective Action

The permittee shall shut-in injection wells whenever the permittee or USEPA determines that operation thereof may be causing upward fluid migration through the well bore of any improperly plugged or unplugged well in the area of review and shall take such steps as the permittee can to properly plug the offending well(s). Any operation of wells which may cause upward fluid migration from an improperly plugged or unplugged well will be considered a violation of this permit. If the permittee or USEPA determines that a permitted well is not in compliance with 40 CFR 146.8, the permittee will immediately shut-in the well until such time as appropriate repairs can be effected and written approval to resume injection is given by the Director. In addition the permittee shall not commence injection under this permit until any and all corrective action has been taken in accordance with any plan contained in Part III(C) of this permit and in accordance with 40 CFR 144.55.

19. Mechanical Integrity (MI) - The permittee must establish and shall maintain mechanical integrity of any well covered under this area permit in accordance with 40 CFR 146.8. The mechanical integrity demonstration consists of two parts: Part I demonstrates no significant leaks in the casing, tubing, or packer and Part II demonstrates no significant fluid movement into an underground source of drinking water (USDW) through vertical channels adjacent to the wellbore. The permittee will be required to demonstrate both parts of the mechanical integrity demonstration in accordance with Part I(E)(19)(a) and (b) of this permit and thereafter once every sixty (60) months from the date of the last approved demonstration.
- (a) Pursuant to 40 CFR 146.8(a)(1), the permittee shall, within six (60) days of the permit's effective date, demonstrate the first part of MI for all solution mining injection wells which were not previously tested and approved by the EPA by using the standard annulus pressure test or another approved method.
  - (b) Pursuant to 40 CFR 146.8(a)(2), the permittee shall, within five (5) months of the permit's effective date, demonstrate the second part of MI for all existing wells which were not previously tested and approved by the EPA by running a noise, temperature or oxygen activation log. A descriptive report interpreting the results of such logs and tests shall be prepared by a knowledgeable log analyst and submitted to the Director. However, should the nature of the casing preclude the use of a noise, temperature or oxygen activation log, then pursuant to 40 CFR 146.8(c)(3), cementing records may be used to demonstrate the presence of adequate cement to prevent fluid migration behind the outermost casing and the wellbore.
  - (c) The permittee shall cause all gauges used in mechanical integrity demonstrations to be calibrated to an accuracy of not less than one-half percent (0.5%) of full scale. A copy of the calibration certificate shall be submitted to the Director or his/her representative at the time of demonstration.
  - (d) The permittee shall cease injection in a well if a loss of mechanical integrity occurs or is discovered during a test, or a loss of mechanical integrity as defined by 40 CFR 146.8 becomes evident during operation. Operations shall not resume until the Director gives approval to recommence.
  - (e) The permittee shall notify the Director of the loss of mechanical integrity, in accordance with the reporting procedures in Part I (E)(10)(e) and II (B)(3)(b) of this permit.
  - (f) The permittee shall report the results of a satisfactory mechanical integrity demonstration as provided in Part II (B)(3)(b) of this permit.

20. Restriction on Injected Substances. The permittee shall be restricted to the injection of those fluids listed on Page A-2 of 2. No fluids other than those from sources noted in the administrative record and approved by the Director shall be injected. The permittee shall submit, each year, a certified statement attesting to compliance with this requirement.
21. Construction, Conversion, operation and plugging abandonment within the Permit Area - The permittee may construct, operate, convert, or plug and abandon wells within the permit area, provided that all permit conditions are met and:
  - (a) The permittee notifies the Director at such times as specified in the permit, and,
  - (b) Any additional wells are:
    - (i) Described and identified by location;
    - (ii) Located within the same well field, facility site, reservoir project, or similar unit in the same State, and injecting in the same formation; and,
    - (iii) Operated by the permittee.

PART II

WELL SPECIFIC CONDITIONS FOR UNDERGROUND INJECTION CONTROL PERMITS

A. CONSTRUCTION REQUIREMENTS

1. Siting - Notwithstanding any other provision of this permit, injection wells shall inject only into a formation which is separated from any USDW by a confining zone that is free of known, open faults or fractures within the area of the review.
2. Casing and Cementing - Injection wells shall be cased and cemented to prevent the movement of fluids into or between underground sources of drinking water. The casing and cement used in the construction of the wells shall be as contained in Attachments L and M of the administrative record corresponding to this permit action which are hereby incorporated by reference as if they appeared fully set forth herein.
3. Wellhead Specifications - A female coupling and valve shall be installed on each wellhead, to be used for independent injection pressure readings.
4. Logs and Tests - Upon approval by the Director of the surface casing and cementation records for all newly drilled or converted wells covered under this permit, any logs and tests noted in Part III of this permit shall be performed, unless already provided. Prior to commencement of injection, the permittee shall submit to the Director for approval a descriptive report prepared by a knowledgeable log analyst interpreting the results of those logs and tests, along with the notice of completion required in Part I(E)(11) of this permit.
5. Formation Data - If not already provided, the permittee shall determine or calculate the following information concerning the injection formation and submit it to the Director for review and approval, prior to operation:
  - (a) Formation fluid pressure;
  - (b) Fracture pressure; and,
  - (c) Physical and chemical characteristics of the formation fluids.



6. Prohibition of Unauthorized Injection: Any underground injection, except as authorized by permit or rule issued under the UIC program, is prohibited. The construction, including drilling or conversion, of any well required to have a permit is prohibited until the permit has been issued and is effective.

B. OPERATING, MONITORING AND REPORTING REQUIREMENTS

1. Operating Requirements

Beginning on the effective date of this permit, the permittee is authorized to operate the injection wells, subject to the limitations and monitoring requirements set forth herein. Except during stimulation, injection pressure at the wellhead shall not exceed a maximum which shall be calculated so as to assure that the pressure in the injection zone during injection does not initiate new fractures or propagate existing fractures in the injection zone. In no case, shall injection pressure initiate fractures in the confining zone or cause the movement of injection or formation fluids into an underground source of drinking water. The injection pressure and injected fluid shall be limited and monitored as specified in Parts I(E) (20) and III(A) of this permit.

2. Monitoring Requirements

- (a) Samples and measurements, taken for the purpose of monitoring as required in Part II(B) (3), shall be representative of the monitored activity. Grab samples shall be used to obtain a representative sample of the fluid to be analyzed. Part III(A) of this permit describes the sampling location and required parameters for injection fluid analysis. The permittee shall identify the types of tests and methods used to generate the monitoring data. The monitoring program shall conform to the one described in Part III(A) of this permit.
- (b) Analytical Methods - Monitoring of the nature of injected fluids shall comply with applicable analytical methods cited and described in Table I of 40 CFR Section 136.3 or in Appendix III of 40 CFR Part 261 or by other methods that have been approved by the Director.
- (c) Injection Fluid Analysis - The nature of the injection fluids shall be monitored as specified in Part III(A) of this permit. An initial analysis of the injection fluid is contained in Attachment H of the administrative record corresponding to this permit action which is hereby incorporated by reference as if it appeared fully set forth herein. Whenever the injection fluid is modified

-15-

to the extent that the analysis required by 40 CFR 146.34(a)(7)(iii) is incorrect or incomplete a new analysis shall be provided to the Director at the time of the next quarterly report. The Director may, by written notice require the permittee to sample and analyze the injection fluid at any time.

- (d) Injection Pressure and Cumulative Volume - The injection pressure shall be monitored semi-monthly and shall be reported quarterly as specified in Part III(A) of this permit. The injected and produced fluid volumes shall be monitored daily and shall be reported quarterly. All Class III wells may be monitored on a field or project basis rather than an individual well basis by manifold monitoring. Manifold monitoring may be used in cases of facilities consisting of more than one injection well, operating with a common manifold. Separate monitoring systems for each well are not required provided the owner/operator demonstrates that manifold is comparable to individual well monitoring. All gauges used in monitoring shall be calibrated according to Part I(19)(c) of this permit.
3. Reporting Requirements - Copies of the monitoring results and all other reports shall be submitted to the Director at the following address:

U.S. Environmental Protection Agency  
Region V  
77 W. Jackson Blvd.  
Chicago, Illinois 60604  
Attn: UIC Section, Enforcement Unit  
(WD-17J)

- (a) Quarterly Reports - The permittee shall submit the results of the injection fluid analyses specified in permit conditions in Part (II)(B)(2)(c) and in Attachment A, no later than the 10th day of the month following the end of the reporting period. Monitoring results shall be recorded on a form which has been signed and certified according to 40 CFR 144.32. Forms shall be submitted at the end of each quarter and shall be postmarked no later than the 10th day of the month following the reporting period. For all new wells, the first report shall be sent no later than the 10th day of the month following the quarter in which injection commences, and for existing wells, the first report shall be sent no later than the 10th day of the month following the first quarter of the final issued permit. This report shall include monthly average, maximum and minimum values for injection pressure, injected and produced volumes and also the specific gravity of the injected fluids.

- (b) Reports on Well Test, Workovers, and Plugging and Abandonment -  
The applicant shall provide the Director with the following reports and test results within sixty (60) days of completion of the activity:
- (i) Mechanical integrity tests, except tests which the well fails in which case twenty-four (24) hour reporting under Part I(10)(e) is applicable;
  - (ii) Logging or other test data;
  - (iii) Well workovers (using EPA Form 7520-12); and
  - (iv) Plugging and abandonment.

PART III

SPECIAL CONDITIONS

These special conditions include, but are not limited to plans for maintaining correct operations procedures, monitoring conditions and reporting, as required by 40 CFR Parts 144 and 146. These plans are described in detail in the permittee's application for a permit, and the permittee is required to adhere to these plans as approved by the Director, as follows:

- A. OPERATING, MONITORING AND REPORTING REQUIREMENTS (ATTACHED)
- B. PLUGGING AND ABANDONMENT PLAN (ATTACHED)
- C. CORRECTIVE ACTION PLAN (ATTACHED)
- D. PERMITTED WELLS AND MAP OF PERMIT AREA (ATTACHED)

OPERATING, MONITORING AND REPORTING REQUIREMENTS

<u>Characteristic</u>	<u>LIMITATION</u>	<u>MINIMUM MONITORING REQ.</u>	<u>MINIMUM REPORTING REQUIREMENTS</u>
*Injection Pressure	1823 psig (MAXIMUM)	semi-monthly	quarterly
Cumulative Injected Volume		daily	quarterly
Cumulative Produced Volume		daily	quarterly
Specific Gravity		monthly grab	quarterly
**Chemical Composition of Injected Fluid		quarterly grab	quarterly

SAMPLING LOCATION: The sampling location shall be at each injection pump discharge before the manifold system

\*The limitation on wellhead pressure serves to prevent confining-formation fracturing. This limitation was calculated using the following formula:  

$$[ \{ 0.8 \text{ psi/ft} - (0.433 \text{ psi/ft}) (\text{specific gravity}) \} \times \text{depth} ] - 14.7 \text{ psi} ]$$
 The maximum wellhead pressure is dependent upon depth and specific gravity of the injected fluid. The A-1 Evaporite at 7479 feet was used as the depth and a specific gravity of 1.28 was used for the injected fluid.

\*\*Chemical composition analysis shall include, but not be limited to, the following: Sodium, Calcium, Barium, Magnesium, Total Iron, Chloride, Sulfate, Carbonate, Bicarbonate, Sulfide, Total Dissolved Solids, pH, Resistivity (ohm-meters @ 75°F), and Specific Gravity.

Composition of Injected Fluids

The injection fluids to the solution mining wells will consist of the following:

- low quality solutions from the solution mining operation
- fresh water from water wells and site run-off from rainfall
- recycled solution from the refinery
- boiler blow down fluid
- facility purge and flush water

Plugging and Abandonment Cementing Data

1. The cavity shall be depressured until the well is completely dead.
2. Run in with tubing and bridge plug to a point at, or near, the top of the cavity.
3. Set bridge plug in competent casing as close as possible to the top of the cavity.
4. Rig up cementing truck and set 50 sack plug of Class A cement above bridge plug. 50 sack plug, Class A = 226'.
5. Pull tubing up through cement to top of plug.
6. Continue to plug 7" casing, using 50/50 Poz cement.  
Yield: 1.29 cu. ft./sack; 100 sack = 129 cu. ft. = 583'/100 sacks.
7. Continue to plug to within 226' of surface. Set 50 sack plug of Class A cement at surface. Cut off and cap 3' below surface.
8. Summary: Set bridge plug at 7780'.

1st plug	7780-7574'	Class A, 3% Cl <sub>2</sub>	50 sacks
2nd plug	7574-6991'	50-50 Poz	100 sacks
3rd plug	6991-6400'	50-50 Poz	100 sacks
4th plug	6400-5825'	50-50 Poz	100 sacks
5th plug	5825-5242'	50-50 Poz	100 sacks
6th plug	5242-4659'	50-50 Poz	100 sacks
7th plug	4659-4076'	50-50 Poz	100 sacks
8th plug	4076-3493'	50-50 Poz	100 sacks
9th plug	3493-2910'	50-50 Poz	100 sacks
10 plug	2910-2327'	50-50 Poz	100 sacks
11 plug	2327-1744'	50-50 Poz	100 sacks
12 plug	1744-1161'	50-50 Poz	100 sacks
13 plug	1161-576'	50-50 Poz	100 sacks
14 plug	576-291'	50-50 Poz	50 sacks
15 plug	291-0'	Class A	60 sacks


 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
 WASHINGTON, D.C. 20460

**PLUGGING AND ABANDONMENT PLAN**

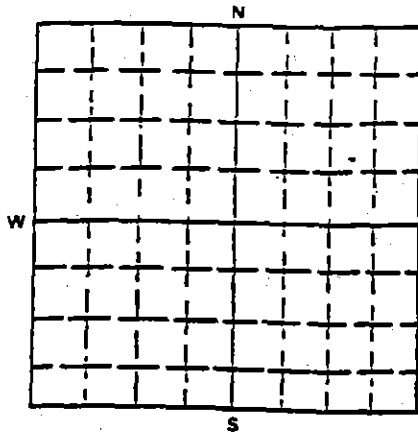
 Wells drilled after  
 1985

WELL NAME &amp; NUMBER, FIELD NAME, LEASE NAME &amp; NUMBER

 Hersey Potash Facility  
 Solution Mining Wells

NAME, ADDRESS, &amp; PHONE NUMBER OF OWNER/OPERATOR

 Kalium Chemicals, Ltd.  
 Suite 100, The East Tower, 2550 Golf Road  
 Rolling Meadows, IL 60008-4051

 Locate Well And Outline Unit On  
 Section Plat — 640 Acres


STATE

COUNTY

MI

Osceola

STATE PERMIT NUMBER

SURFACE LOCATION DESCRIPTION

LOCATE WELL IN TWO DIRECTIONS FROM NEAREST LINES OF QUARTER SECTION AND DRILLING UNIT

 Surface  
 Location \_\_\_\_\_ ft. From (N/S) \_\_\_\_\_ Line Of Quarter Section

And \_\_\_\_\_ ft. From (E/W) \_\_\_\_\_ Line Of Quarter Section

TYPE OF AUTHORIZATION

- ☐ Individual Permit  
☐ Rule  
☒ Area Permit

 Number of Wells 8  
 In Area Permit \_\_\_\_\_

U.S.EPA Permit Number \_\_\_\_\_

WELL  
ACTIVITY

- ☐ Class I  
☐ Hazardous  
☐ Nonhazardous  
☐ Class II  
☐ Brine Disposal  
☐ Enhanced Recovery  
☐ Hydrocarbon Storage  
☒ Class III  
☐ Class V

**CASING/TUBING/CEMENT RECORD AFTER PLUGGING AND ABANDONMENT**

Size	WT (lb./ft.) TSG/CSG	Original Annulus (CSG) (ft.)	CSG to be left in place (ft.)	Hole Size (in.)	Seals Cement Used	Type
18-5/8	86	600	600	24"	840	Life/Class A
13-5/8	54	900	900	17-1/2"	700	Life/Class A
9-5/8	40	5450	5450	12-1/4"	1700	Life/Class A
7	23-29	7800	7800	8-1/2"	1180	Life/Class A

 METHOD OF EMPLACEMENT  
 OF CEMENT PLUGS

- ☐ The Balance Method  
☐ The Dump Barrel Method  
☐ The Two Plug Method  
☐ Other, Explain:

**CEMENT TO PLUG AND ABANDON DATA:**

Plug # 1	Plug #	Plug #	Plug #	Plug #	Plug # 14	Plug # 15
Size of Hole or Pipe in Which Plug Will Be Placed (inches):	7				7	7
Calculated Top of Plug (ft.):	1514	Plugs 2 through 13			291	0
Measured Top of Plug (ft.):		7574 to 576 feet				0
Depth to Bottom of Plug (ft.):	1780	continuous cement in			576	291
Sacks of Cement to be Used	50	100 sack (583') intervals.			50	60
Slurry Volume to be Used (cu. ft.):	53	Use 50-50 Poz cement at			64	64
Slurry Weight (lb./gal.):	15.6	14.5 lb/gal.			14.5	15.6
Type of Cement, Soaker or Other Material Used	Class A				50/50Poz	Class
Type of Prestress Used	Brine					

**DESCRIPTION OF PLUGGING PROCEDURE**

Estimated cost/well = \$22,000.00 Total cost for 8 wells = \$176,000.00

**ESTIMATED COST OF PLUGGING AND ABANDONMENT**

Cement	\$	Cast Iron Bridge Plug	\$
Logging	\$	Cement Retainer	\$
Rig or Pulling Unit	\$	Miscellaneous	\$

**CERTIFICATION**

I certify under the penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment. (Ref. 40 CFR 144.32)

NAME AND OFFICIAL TITLE (Please type or print)

Donald D. Metzger

SIGNATURE

DATE SIGNED

11-27-87




 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
 WASHINGTON, D.C. 20460

**PLUGGING AND ABANDONMENT PLAN**

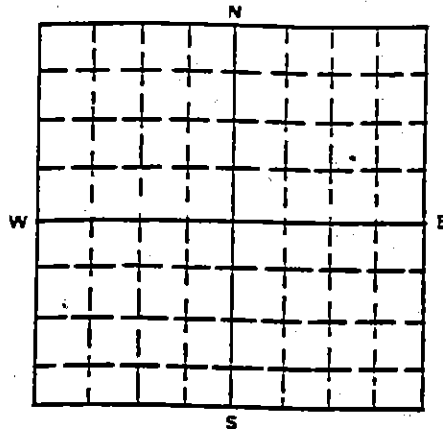
 Wells drilled prior  
 to 1986

WELL NAME &amp; NUMBER, FIELD NAME, LEASE NAME &amp; NUMBER

 Hersey Potash Facility  
 Solution Mining Wells

NAME, ADDRESS, &amp; PHONE NUMBER OF OWNER/OPERATOR

 Kalium Chemicals, Ltd.  
 Suite 100, The East Tower  
 2550 Golf Rd.; Rolling Meadows, IL 60008-4051

 Locate Well And Outline Unit On  
 Section Plat — 640 Acres


STATE

MI

COUNTY

Osceola

STATE PERMIT NUMBER

SURFACE LOCATION DESCRIPTION

LOCATE WELL IN TWO DIRECTIONS FROM NEAREST LINES OF QUARTER SECTION AND DRILLING UNIT

 Surface  
 Location \_\_\_\_\_ ft. From (N/S) \_\_\_\_\_ Line Of Quarter Section

And \_\_\_\_\_ ft. From (E/W) \_\_\_\_\_ Line Of Quarter Section

**TYPE OF AUTHORIZATION**

- ☐ Individual Permit  
☐ Rule  
☒ Area Permit

 Number of Wells  
 In Area Permit 8

U.S.EPA Permit Number \_\_\_\_\_

**WELL  
 ACTIVITY**

- ☐ Class I  
☐ Hazardous  
☐ Nonhazardous  
☐ Class II  
☐ Brine Disposal  
☐ Enhanced Recovery  
☐ Hydrocarbon Storage  
☒ Class III  
☐ Class V

**CASING/TUBING/CEMENT RECORD AFTER PLUGGING AND ABANDONMENT**

Size	WT (lb./ft.) TSG/CSG	Original Annular (CSG) (ft.)	CSG to be Left in Well (ft.)	Hole Size (in.)	Annular Cement Used	Type
13-3/8"	54	900	900	17-1/2"	700	Lite/Class A
9-5/8"	40	5450	5450	12-1/4"	1700	Lite/Class A
7"	23	7800	7800	8-1/2"	1180	Lite/Poz/Class H

**METHOD OF EMPLACEMENT  
 OF CEMENT PLUGS**

- ☐ The Balance Method  
☐ The Dump Bailer Method  
☐ The Two Plug Method  
☐ Other, Explain:

CEMENT TO PLUG AND ABANDON DATA:				Plug # 1	Plug # 2	Plug # 3	Plug # 4	Plug # 5	Plug # 14	Plug # 15
Size of Hole or Pipe in Which Plug Will Be Placed (inches)				7"					7"	7"
Calculated Top of Plug (ft.)				7574	Plugs 2 through 13				291	0
Measured Top of Plug (ft.)					7574 to 576 feet					
Depth to Bottom of Plug (ft.)				7780	continuous cement in				576	291
Sacks of Cement to be Used				50	100 sack (583') intervals.				50	60
Slurry Volume to be Used (cu. ft.)				53	Use 50-50 Poz cement at				64	64
Slurry Weight (lb./gal.)				15.6	14.5 lb/gal.				14.5	15.6
Type of Cement, Spacer or Other Material Used				Class A					50/50Poz Class A	
Type of Preflush Used				Brine						

**DESCRIPTION OF PLUGGING PROCEDURE**

Estimated cost/well = \$22,000.00 Total cost for 8 wells = \$176,000.00

**ESTIMATED COST OF PLUGGING AND ABANDONMENT**

Cement	\$	Cast Iron Bridge Plug	\$
Logging	\$	Cement Retainer	\$
Rig or Pulling Unit	\$	Miscellaneous	\$

**CERTIFICATION**

I certify under the penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment. (Ref. 40 CFR 144.32)

NAME AND OFFICIAL TITLE (Please type or print)

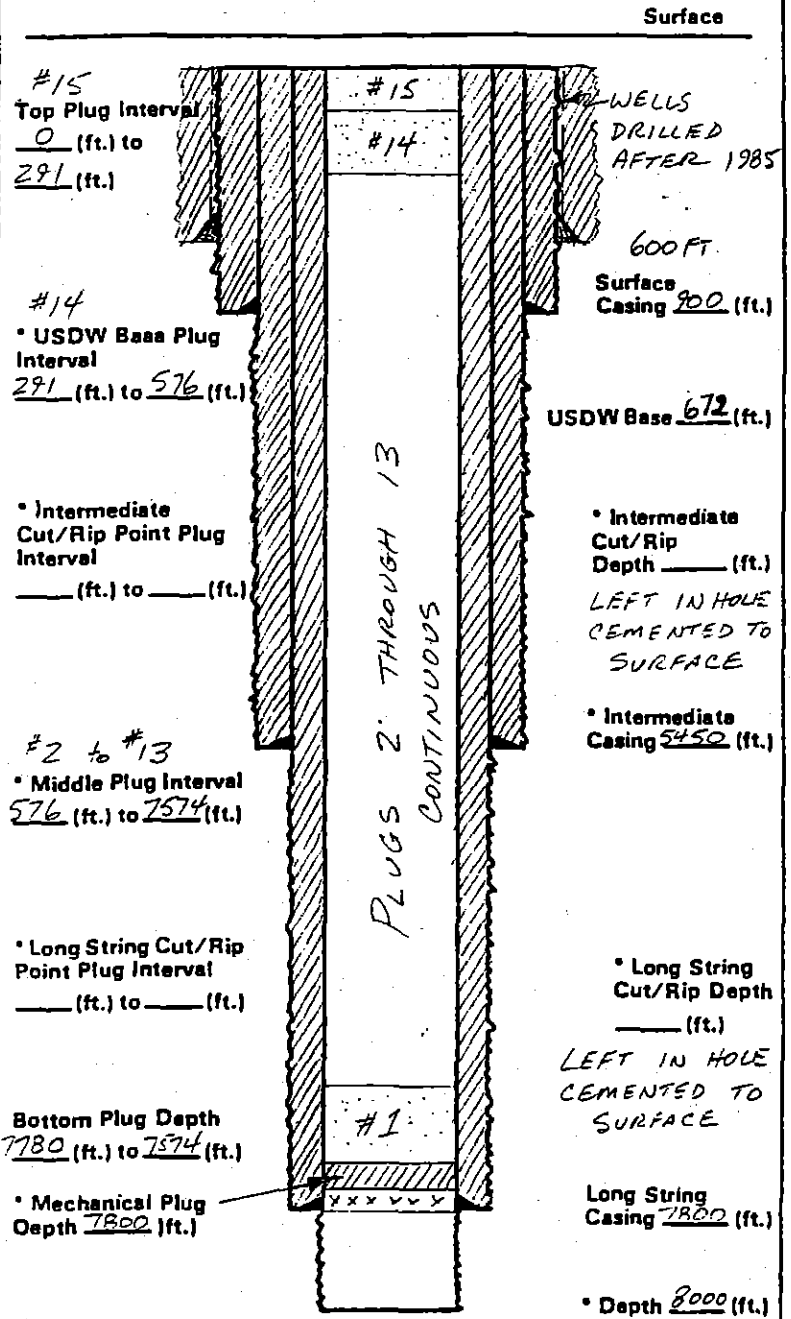
 Donald D. Metzger  
 Resident Manager

SIGNATURE

DATE SIGNED

11-27-91

## PLUGGING AND ABANDONMENT CONSTRUCTION



- Add Any Additional Information
- May Not Apply

[illegible]

CORRECTIVE ACTION PLAN

No corrective action is required at this time

## Names and Locations of Wells Authorized Under This Permit

<u>Well Name</u>	<u>Surface Location</u>
1. KCL 1011	SE/4-NW/4-NW/4 of section 26-T17N-R9W
2. KCL 1012	SE/4-NW/4-NW/4 of section 26-T17N-R9W
3. KCL 1041	SW/4-NW/4-NW/4 of section 26-T17N-R9W
4. KCL 1042	SW/4-NW/4-NW/4 of section 26-T17N-R9W
5. KCL 1051	SW/4-NW/4-NW/4 of section 26-T17N-R9W
6. KCL 1052	SW/4-NW/4-NW/4 of section 26-T17N-R9W
7. KCL 2031	W LINE-NE/4-SW/4 of section 26-T17N-R9W
8. KCL 2061	N/2-SW/4 of section 26-T17-R9W

The solution mining injection wells will be limited to the following area:  
The SE/4 of Section 22, The S/2 of Section 23, The E/2 of Section 27, All  
Section 26, The NE/4 of Section 34, The N/2 of Section 35, all in Township  
17W, Range 9W.

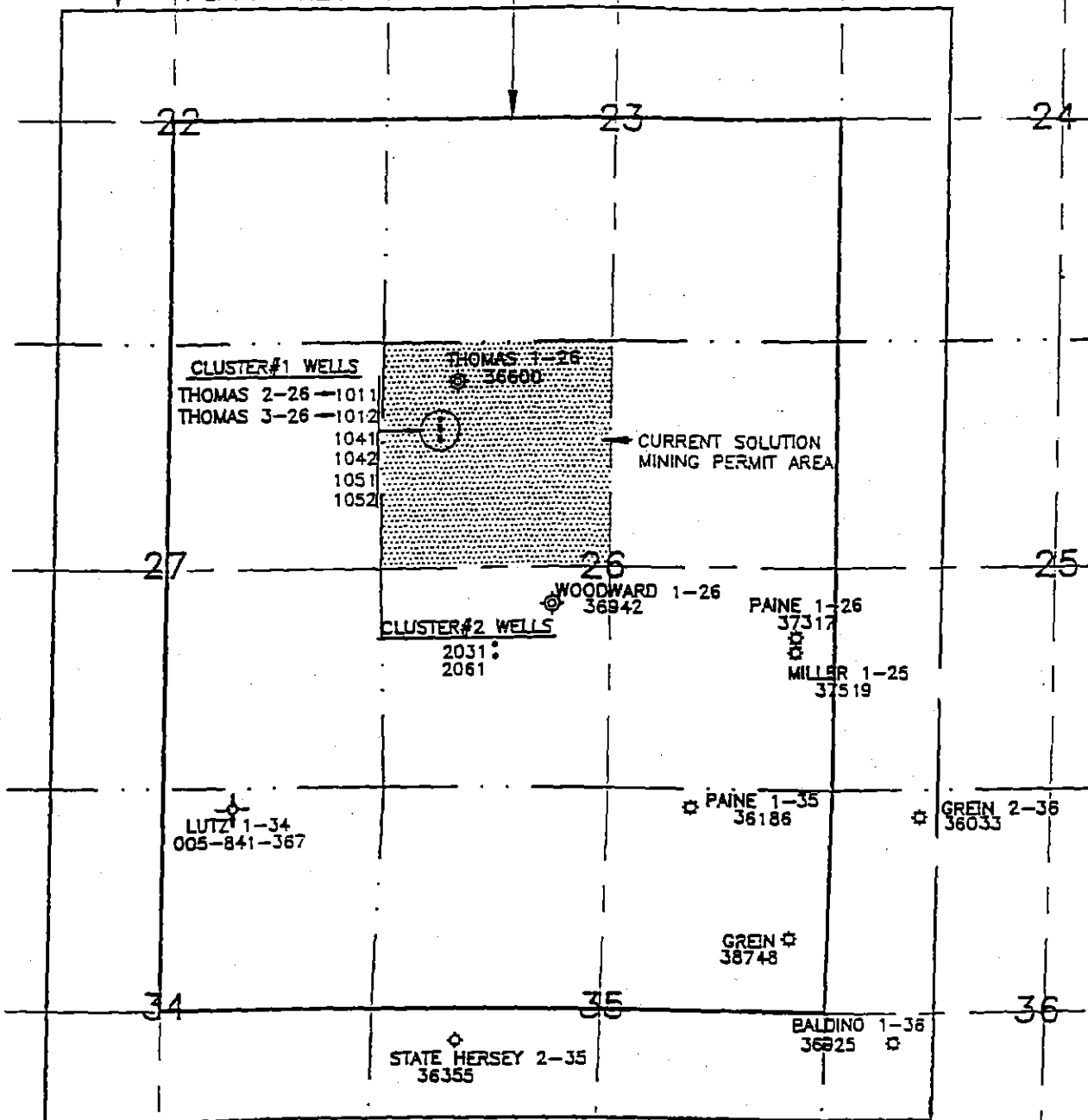
MUSKEGON RIVER

MI-133-3G-A002

Page D-2 of 2

1/4 MILE WIDTH  
CIRCUMSCRIBING  
PERMIT AREA

PROPOSED SOLUTION  
MINING PERMIT AREA



HERSEY  
GRANT

TOWNSHIP T17N R9W

TOWNSHIP T16N R9W

• SOLUTION MINING WELLS

◇ DRY HOLE

◊ GAS WELL

◆ DISPOSAL WELLS

⬢ ABANDONED MINERAL TEST WELL

JOB No. | USP-0020

DRAWN | PS

NOV.7/91

KALIUM CHEMICALS,LTD.

CHECKED |

TITLE- AREA OF REVIEW

APPROVED |

SCALE

1" = 2000'

DRG. No.- FIGURE A-1

REV. A

PS NOV.91

ADDED GREIN 38748





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

Page 1 of 17

UNDERGROUND INJECTION CONTROL MINOR PERMIT MODIFICATION:  
CLASS III AREA PERMIT

REPLY TO THE ATTENTION OF:

Permit Number: MI-133-3G-A002

Project Name : Hersey Potash Project

Pursuant to the provisions of the Safe Drinking Water Act, as amended (42 U.S.C. 300f et seq., commonly known as the SDWA) and implementing regulations promulgated by the United States Environmental Protection Agency (USEPA) at Parts 124, 144, 146 and 147 of Title 40 Code of Federal Regulations (CFR), Kalium chemicals, Ltd. of Rolling Meadows, Illinois is authorized to operate eleven existing solution mining injection wells located in Michigan, Osceola County, in a permit area limited to that described in Part III(D) of this permit. Injection shall be limited to the Salina Group between 5765 and 7896 feet, upon the express condition that the permittee meet the restrictions set forth herein. The names and locations of wells authorized under this permit and a map of the permit area are provided in Part III(D) of this permit. Injection shall not commence into any newly drilled or converted well until the operator has received authorization in accordance with Part I(E)(11) of this permit. Additional injection wells may be constructed and operated within the permit area provided that the permittee notifies the Director prior to construction and all permit requirements are met.

All references to 40 Code of Federal Regulations are to all regulations that are in effect on the date that this permit is effective.

This permit is a minor permit modification of an existing area permit which was signed on April 15, 1992, and shall remain in full force and effect during the operating life of the field, unless this permit is otherwise revoked, terminated, modified or reissued pursuant to 40 CFR 144.39 or 144.40 and 144.41. This permit shall also remain in effect upon delegation of primary enforcement responsibility to the State of Michigan unless that State chooses to adopt this permit as a State permit. This permit will be reviewed at least every five (5) years from the effective date specified above.

Signed and date: December 15, 1993

Edward P. Watters

Dale S. Bryson  
Director, Water Division

PART I

GENERAL PERMIT COMPLIANCE

A. EFFECT OF PERMIT

The permittee is allowed to engage in underground injection in accordance with the conditions of this permit. The underground injection activity, otherwise authorized by this permit or rule, shall not allow the movement of fluid containing any contaminant into underground sources of drinking water, if the presence of that contaminant may cause a violation of any Primary Drinking Water Regulation found in 40 CFR Part 142 or may otherwise adversely affect the health of persons. Any underground injection activity not specifically authorized in this permit or otherwise authorized by permit or rule is prohibited. Issuance of this permit does not convey property rights of any sort or any exclusive privilege; nor does it authorize any injury to persons or property, any invasion of other private rights, or any infringement of State or local law or regulations. Compliance with the terms of this permit does not constitute a defense to any action brought under Section 1431 of the Safe Drinking Water Act (SDWA), or any other law governing protection of public health or the environment.

B. PERMIT ACTIONS

This permit may be modified, revoked and reissued, or terminated for cause as specified in 40 CFR 144.39, 144.40, and 144.41. The filing of a request for a permit modification, revocation and reissuance, termination, or the notification of planned changes or anticipated noncompliance on the part of the permittee does not stay the applicability or enforceability of any permit condition.

C. SEVERABILITY

The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances and the remainder of this permit shall not be affected thereby.

D. CONFIDENTIALITY

In accordance with 40 CFR Part 2 and Section 144.5, any information submitted to the USEPA pursuant to this permit may be claimed as confidential by the submitter. Any such claim must be asserted at the time of submission by stamping the words "confidential business information" on each page containing such information.



If no claim is made at the time of submission, USEPA may make the information available to the public without further notice. If a claim is asserted, the validity of the claim will be assessed in accordance with the procedures in 40 CFR Part 2 (Public Information). Claims of confidentiality for the following information will be denied:

- (1) The name and address of the permittee; and,
- (2) Information which deals with the existence, absence or level of contaminants in drinking water.

E. DUTIES AND REQUIREMENTS

1. Duty to Comply - The permittee shall comply with all conditions of this permit, except to the extent and for the duration such noncompliance is authorized by an emergency permit pursuant to 40 CFR 144.34. Any permit noncompliance constitutes a violation of the SDWA and is grounds for enforcement action, permit termination, revocation and reissuance or modification.
2. Penalties for Violations of Permit Conditions - Any person who operates these wells in violation of permit conditions is subject to civil penalties, fines, and other enforcement action under the SDWA and may be subject to such actions under the Resource Conservation and Recovery Act. Any person who willfully violates a permit condition may be subject to criminal prosecution.
3. Continuation of Expiring Permits
  - (a) Duty to Reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must submit a complete application for a new permit at least 180 days before this permit expires.
  - (b) Permit Extensions. The conditions of an expired permit may continue in force in accordance with 5 U.S.C. 558 (c) and 40 CFR 144.37.
  - (c) Effect. Permits continued under 5 U.S.C. 558 (c) and 40 CFR 144.37 remain fully effective and enforceable.
  - (d) Enforcement. When the permittee is not in compliance with the conditions of the expiring or expired permit the Director may choose to do any or all of the following:
    - (i) Initiate enforcement action based upon the permit which has been continued;

- (ii) Issue a notice of intent to deny the new permit. If the permit is denied, the owner or operator would then be required to cease the activities authorized by the continued permit or be subject to enforcement action for operation without a permit;
  - (iii) Issue a new permit under 40 CFR Part 124 with appropriate conditions; or
  - (iv) Take other actions authorized by Underground Injection Control regulations.
- (e) State Continuation - A USEPA permit does not continue in force beyond its expiration date under Federal law if at that time a State has primary enforcement responsibility under the SDWA. A State authorized to administer the UIC program may continue either USEPA or State-issued permits until the effective date of the new permits, if State law allows. Otherwise, the facility or activity is operating without a permit from the time of expiration of the old permit to the effective date of the State-issued new permit. Furthermore, if the State does not continue the USEPA permit upon obtaining primary enforcement responsibility, the permittee must obtain a new State permit or be authorized to inject by State rule or he will be injecting without authorization.
4. Need to Halt or Reduce Activity not a Defense - It shall not be a defense for a permittee in an enforcement action to state that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.
5. Duty to Mitigate - The permittee shall take all reasonable steps to minimize or correct any adverse impact on the environment resulting from noncompliance with this permit.
6. Proper Operation and Maintenance - The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of the permit.

7. Duty to Provide Information - The permittee shall furnish to the Director, within thirty (30) days, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Director, upon request, copies of records required by this permit to be retained.
8. Inspection and Entry - The permittee shall allow the Director, or an authorized representative, upon the presentation of credentials and other documents as may be required by law to:
  - (a) Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records are kept under the conditions of this permit;
  - (b) Have access to and copy, at reasonable times, any records that must be retained under the conditions of this permit;
  - (c) Inspect at reasonable times any facilities, equipment (including monitoring equipment), practices, or operations regulated or required under this permit; and
  - (d) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the SDWA, any substances or parameters at any facilities, equipment or operations regulated or required under this permit.
9. Records
  - (a) The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, and copies of all records required by this permit, for a period of at least three (3) years from the date of the sample, measurement or report. The permittee shall also maintain records of all data required to complete this permit application and any supplemental information submitted under 40 CFR 144.27, 144.28 and 144.31. These periods may be extended by request of the Director at any time by written notice to the permittee.
  - (b) The permittee shall retain records concerning the nature and composition of all injected fluids until three (3) years after the completion of plugging and abandonment of the last operating injection well covered under this permit. Such plugging and abandonment shall be conducted in accordance with the plugging and abandonment plan, contained in Part III(B) of this permit. The owner or operator shall

continue to retain the records after the three (3) year retention period unless he delivers the records to the Regional Administrator or obtains written approval from the Regional Administrator to discard the records.

(c) Records of monitoring information shall include:

- (i) The date, exact place, and the time of sampling or measurements;
- (ii) The individual(s) who performed the sampling or measurements;
- (iii) A precise description of both sampling methodology and the handling of samples;
- (iv) The date(s) analyses were performed;
- (v) The individual(s) who performed the analyses;
- (vi) The analytical techniques or methods used; and,
- (vii) The results of such analyses.

10. Notification Requirements

- (a) Planned Changes - The permittee shall notify and obtain the Director's approval at least thirty (30) days prior to any planned physical alterations or additions to the permitted facility, or changes in the injection fluids. Within ten (10) days prior to injection, an analysis of new injection fluids shall be submitted to the Director in accordance with Parts II(B)(2) and II(B)(3) of this permit.
- (b) Anticipated Noncompliance - The permittee shall give at least thirty (30) days advance notice to the Director for his/her approval of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.
- (c) Transfer of Permits - This permit is not transferrable to any person except after notice is sent to the Director at least thirty (30) days prior to transfer and the requirements of 40 CFR §144.38 have been met. The Director may require modification or revocation of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the SDWA.

- (d) Compliance Schedules - Reports of compliance or non-compliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted to the Director no later than thirty (30) days following each schedule date.
- (e) Twenty-Four (24) Hour Reporting
  - (i) The permittee shall report to the Director any noncompliance which may endanger health or the environment. This information shall be provided orally within twenty-four (24) hour from the time the permittee becomes aware of the circumstances, and shall include the following information:
    - (a) Any monitoring or other information which indicates that any contaminant may cause an endangerment to an underground source of drinking water; or,
    - (b) Any noncompliance with a permit condition or malfunction of the injection system which may cause fluid migration into or between underground sources of drinking water.
  - (ii) A written submission shall also be provided as soon as possible but no later than five (5) days from the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance.
- (f) Other Noncompliance - All other instances of noncompliance shall also be reported by the permittee in accordance with Part I(E)(10)(e)(i) and (ii) of this permit.
- (g) Other Information - If or when the permittee becomes aware that the permittee failed to submit any relevant facts in the permit application, or submitted incorrect information in a permit application or in any report to the Director, the permittee shall promptly submit such facts or corrected information in accordance with 40 CFR 144.51 (1)(8).

- (h) Report on Permit Review - Within thirty (30) days of receipt of the final issued permit, the permittee shall report to the Director that the permittee has read and is personally familiar with all terms and conditions of this permit.
- 11. Commencing Injection - The permittee shall not commence injection into any newly drilled or converted well until:
  - (a) Formation data and injection fluid analysis have been submitted in accordance with Part II(A) (5) and II(B) (2), respectively;
  - (b) A report on any logs and tests required under Part II(A) (4) of this permit has been submitted.
  - (c) Mechanical integrity of the well has been demonstrated in accordance with Part I(E) (19);
  - (d) Any required corrective action has been performed in accordance with Parts I(E) (18) and III(C); and,
  - (e) Construction is complete and the permittee has submitted to the Director, by certified mail with return receipt requested, a notice of completion of construction using EPA Form 7520-10, a plugging and abandonment plan, a copy of the State permit and either:
    - (i) The Director has inspected or otherwise reviewed the new injection well and finds it is in compliance with the conditions of the permit; or,
    - (ii) The permittee has not received, within thirteen (13) days of the date of the Director's receipt of the report required above, notice from the Director of his or her intent to inspect or otherwise review the new injection well, in which case prior inspection or review is waived and the permittee may commence injection.
- 12. Signatory Requirements - All reports or other information requested by the Director shall be signed and certified according to 40 CFR 144.32.
- 13. Notice of Plugging and Abandonment - The permittee shall notify the Director at least forty-five (45) working days before conversion or abandonment of any injection well covered under this permit.

14. Plugging and Abandonment. The permittee shall plug and abandon any well covered under this permit consistent with 40 CFR 146.10, as provided for in the plugging and abandonment plan contained in Part III(B) of this permit. Within sixty (60) working days after plugging a well, or at the time of the next quarterly report (whichever is shorter), the permittee shall submit a report to the Director. The report shall be certified as accurate by the person who performed the plugging operation, and shall consist of either:
  - (a) A statement that the well was plugged in accordance with the plan previously submitted to the Director; or
  - (b) If the actual plugging differed from the approved plan, a statement defining the actual plugging and explaining why the Director should approve such deviation. Any deviation from a previously approved plan which may endanger underground sources of drinking water is cause for the Director to require the operator to replug the well.
15. Inactive Wells. After cessation of injection for two (2) years the permittee shall plug and abandon a well in accordance with the plan and 40 CFR 144.52 (a)(6) unless the permittee has:
  - (a) Provided notice to the Director; and
  - (b) Described actions or procedures, which are deemed satisfactory by the Director, that the permittee will take to ensure that the well will not endanger underground sources of drinking water during the period of temporary abandonment. These actions and procedures shall include compliance with the technical requirements applicable to active injection wells unless waived, in writing, by the Director.
16. Financial Responsibility - The permittee shall maintain financial responsibility and resources to plug and abandon the underground injection wells in accordance with 40 CFR 144.52(a)(7) as provided in Attachment R of the administrative record corresponding to this permit action which is hereby incorporated by reference as if it appeared fully set forth herein. The permittee shall not substitute an alternative demonstration of financial responsibility from that which the Director has approved, unless the permittee has previously submitted evidence of that alternative demonstration to the Director and the Director has notified the permittee in writing that the alternative demonstration of financial responsibility is acceptable. The financial responsibility mechanism shall be updated periodically, upon request of the Director, except when

Financial Statement Coverage is used as the financial mechanism; this coverage must be updated on an annual basis. If additional wells are to be constructed under the conditions of this permit, the permittee shall increase the amount of financial assurance prior to beginning construction, to cover the additional cost of plugging and abandonment.

17. Insolvency

- (a) In the event of the bankruptcy of the trustee or issuing institution of the financial mechanism, or a suspension or revocation of the authority of the trustee institution to act as trustee or the institution issuing the financial mechanism to issue such an instrument, the permittee must submit an alternative demonstration of financial responsibility acceptable to the Director within sixty (60) days after such event. Failure to do so will result in the termination of this permit pursuant to 40 CFR 144.40(a)(1).
- (b) An owner or operator must also notify the Director by certified mail of the commencement of voluntary or involuntary proceedings under Title 11 (Bankruptcy), U.S. Code, naming the owner or operator as debtor, within ten (10) business days after the commencement of the proceeding. A guarantor of a corporate guarantee must make such a notification if he or she is named as debtor, as required under the terms of the guarantee.

18. Corrective Action

The permittee shall shut-in injection wells whenever the permittee or USEPA determines that operation thereof may be causing upward fluid migration through the well bore of any improperly plugged or unplugged well in the area of review and shall take such steps as the permittee can to properly plug the offending well(s). Any operation of wells which may cause upward fluid migration from an improperly plugged or unplugged well will be considered a violation of this permit. If the permittee or USEPA determines that a permitted well is not in compliance with 40 CFR 146.8, the permittee will immediately shut-in the well until such time as appropriate repairs can be effected and written approval to resume injection is given by the Director. In addition the permittee shall not commence injection under this permit until any and all corrective action has been taken in accordance with any plan contained in Part III(C) of this permit and in accordance with 40 CFR 144.55.



19. Mechanical Integrity (MI) - The permittee must establish and shall maintain mechanical integrity of any well covered under this area permit in accordance with 40 CFR 146.8. The mechanical integrity demonstration consists of two parts: Part I demonstrates no significant leaks in the casing, tubing, or packer and Part II demonstrates no significant fluid movement into an underground source of drinking water (USDW) through vertical channels adjacent to the wellbore. The permittee will be required to demonstrate both parts of the mechanical integrity demonstration in accordance with Part I(E)(19)(a) and (b) of this permit and thereafter once every sixty (60) months from the date of the last approved demonstration.
- (a) Pursuant to 40 CFR 146.8(a)(1), the permittee shall, within six (60) days of the permit's effective date, demonstrate the first part of MI for all solution mining injection wells which were not previously tested and approved by the EPA by using the standard annulus pressure test or another approved method.
  - (b) Pursuant to 40 CFR 146.8(a)(2), the permittee shall, within five (5) months of the permit's effective date, demonstrate the second part of MI for all existing wells which were not previously tested and approved by the EPA by running a noise, temperature or oxygen activation log. A descriptive report interpreting the results of such logs and tests shall be prepared by a knowledgeable log analyst and submitted to the Director. However, should the nature of the casing preclude the use of a noise, temperature or oxygen activation log, then pursuant to 40 CFR 146.8(c)(3), cementing records may be used to demonstrate the presence of adequate cement to prevent fluid migration behind the outermost casing and the wellbore.
  - (c) The permittee shall cause all gauges used in mechanical integrity demonstrations to be calibrated to an accuracy of not less than one-half percent (0.5%) of full scale. A copy of the calibration certificate shall be submitted to the Director or his/her representative at the time of demonstration.
  - (d) The permittee shall cease injection in a well if a loss of mechanical integrity occurs or is discovered during a test, or a loss of mechanical integrity as defined by 40 CFR 146.8 becomes evident during operation. Operations shall not resume until the Director gives approval to recommence.
  - (e) The permittee shall notify the Director of the loss of mechanical integrity, in accordance with the reporting procedures in Part I (E)(10)(e) and II (B)(3)(b) of this permit.
  - (f) The permittee shall report the results of a satisfactory mechanical integrity demonstration as provided in Part II (B)(3)(b) of this permit.

20. Restriction on Injected Substances. The permittee shall be restricted to the injection of those fluids listed on Page A-2 of 2. No fluids other than those from sources noted in the administrative record and approved by the Director shall be injected. The permittee shall submit, each year, a certified statement attesting to compliance with this requirement.
21. Construction, Conversion, operation and plugging abandonment within the Permit Area - The permittee may construct, operate, convert, or plug and abandon wells within the permit area, provided that all permit conditions are met and:
  - (a) The permittee notifies the Director at such times as specified in the permit, and,
  - (b) Any additional wells are:
    - (i) Described and identified by location;
    - (ii) Located within the same well field, facility site, reservoir project, or similar unit in the same State, and injecting in the same formation; and,
    - (iii) Operated by the permittee.

PART II

WELL SPECIFIC CONDITIONS FOR UNDERGROUND INJECTION CONTROL PERMITS

A. CONSTRUCTION REQUIREMENTS

1. Siting - Notwithstanding any other provision of this permit, injection wells shall inject only into a formation which is separated from any USDW by a confining zone that is free of known, open faults or fractures within the area of the review.
2. Casing and Cementing - Injection wells shall be cased and cemented to prevent the movement of fluids into or between underground sources of drinking water. The casing and cement used in the construction of the wells shall be as contained in Attachments L and M of the administrative record corresponding to this permit action which are hereby incorporated by reference as if they appeared fully set forth herein.
3. Wellhead Specifications - A female coupling and valve shall be installed on each wellhead, to be used for independent injection pressure readings.
4. Logs and Tests - Upon approval by the Director of the surface casing and cementation records for all newly drilled or converted wells covered under this permit, any logs and tests noted in Part III of this permit shall be performed, unless already provided. Prior to commencement of injection, the permittee shall submit to the Director for approval a descriptive report prepared by a knowledgeable log analyst interpreting the results of those logs and tests, along with the notice of completion required in Part I(E) (11) of this permit.
5. Formation Data - If not already provided, the permittee shall determine or calculate the following information concerning the injection formation and submit it to the Director for review and approval, prior to operation:
  - (a) Formation fluid pressure;
  - (b) Fracture pressure; and,
  - (c) Physical and chemical characteristics of the formation fluids.

6. Prohibition of Unauthorized Injection: Any underground injection, except as authorized by permit or rule issued under the UIC program, is prohibited. The construction, including drilling or conversion, of any well required to have a permit is prohibited until the permit has been issued and is effective.

B. OPERATING, MONITORING AND REPORTING REQUIREMENTS

1. Operating Requirements

Beginning on the effective date of this permit, the permittee is authorized to operate the injection wells, subject to the limitations and monitoring requirements set forth herein. Except during stimulation, injection pressure at the wellhead shall not exceed a maximum which shall be calculated so as to assure that the pressure in the injection zone during injection does not initiate new fractures or propagate existing fractures in the injection zone. In no case, shall injection pressure initiate fractures in the confining zone or cause the movement of injection or formation fluids into an underground source of drinking water. The injection pressure and injected fluid shall be limited and monitored as specified in Parts I(E) (20) and III(A) of this permit.

2. Monitoring Requirements

- (a) Samples and measurements, taken for the purpose of monitoring as required in Part II(B) (3), shall be representative of the monitored activity. Grab samples shall be used to obtain a representative sample of the fluid to be analyzed. Part III(A) of this permit describes the sampling location and required parameters for injection fluid analysis. The permittee shall identify the types of tests and methods used to generate the monitoring data. The monitoring program shall conform to the one described in Part III(A) of this permit.
- (b) Analytical Methods - Monitoring of the nature of injected fluids shall comply with applicable analytical methods cited and described in Table I of 40 CFR Section 136.3 or in Appendix III of 40 CFR Part 261 or by other methods that have been approved by the Director.
- (c) Injection Fluid Analysis - The nature of the injection fluids shall be monitored as specified in Part III(A) of this permit. An initial analysis of the injection fluid is contained in Attachment H of the administrative record corresponding to this permit action which is hereby incorporated by reference as if it appeared fully set forth herein. Whenever the injection fluid is modified

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to the extent that the analysis required by 40 CFR 146.34(a)(7)(iii) is incorrect or incomplete a new analysis shall be provided to the Director at the time of the next quarterly report. The Director may, by written notice require the permittee to sample and analyze the injection fluid at any time.

- (d) Injection Pressure and Cumulative Volume - The injection pressure shall be monitored semi-monthly and shall be reported quarterly as specified in Part III(A) of this permit. The injected and produced fluid volumes shall be monitored daily and shall be reported quarterly. All Class III wells may be monitored on a field or project basis rather than an individual well basis by manifold monitoring. Manifold monitoring may be used in cases of facilities consisting of more than one injection well, operating with a common manifold. Separate monitoring systems for each well are not required provided the owner/operator demonstrates that manifold is comparable to individual well monitoring. All gauges used in monitoring shall be calibrated according to Part I(19)(c) of this permit.
3. Reporting Requirements - Copies of the monitoring results and all other reports shall be submitted to the Director at the following address:
- U.S. Environmental Protection Agency  
Region V  
77 W. Jackson Blvd.  
Chicago, Illinois 60604  
Attn: UIC Section, Enforcement Unit  
(WD-17J)
- (a) Quarterly Reports - The permittee shall submit the results of the injection fluid analyses specified in permit conditions in Part (II)(B)(2)(c) and in Attachment A, no later than the 10th day of the month following the end of the reporting period. Monitoring results shall be recorded on a form which has been signed and certified according to 40 CFR 144.32. Forms shall be submitted at the end of each quarter and shall be postmarked no later than the 10th day of the month following the reporting period. For all new wells, the first report shall be sent no later than the 10th day of the month following the quarter in which injection commences, and for existing wells, the first report shall be sent no later than the 10th day of the month following the first quarter of the final issued permit. This report shall include monthly average, maximum and minimum values for injection pressure, injected and produced volumes and also the specific gravity of the injected fluids.

- (b) Reports on Well Test, Workovers, and Plugging and Abandonment - The applicant shall provide the Director with the following reports and test results within sixty (60) days of completion of the activity:
- (i) Mechanical integrity tests, except tests which the well fails in which case twenty-four (24) hour reporting under Part I(10)(e) is applicable;
  - (ii) Logging or other test data;
  - (iii) Well workovers (using EPA Form 7520-12); and
  - (iv) Plugging and abandonment.

PART III

SPECIAL CONDITIONS

These special conditions include, but are not limited to plans for maintaining correct operations procedures, monitoring conditions and reporting, as required by 40 CFR Parts 144 and 146. These plans are described in detail in the permittee's application for a permit, and the permittee is required to adhere to these plans as approved by the Director, as follows:

- A. OPERATING, MONITORING AND REPORTING REQUIREMENTS (ATTACHED)
- B. PLUGGING AND ABANDONMENT PLAN (ATTACHED)
- C. CORRECTIVE ACTION PLAN (ATTACHED)
- D. PERMITTED WELLS AND MAP OF PERMIT AREA (ATTACHED)

OPERATING, MONITORING AND REPORTING REQUIREMENTS

<u>LIMITATION</u>	<u>MINIMUM MONITORING REQ.</u>	<u>MINIMUM REPORTING REQUIREMENTS</u>
<u>Characteristic</u>	<u>Freq.</u>	<u>Type</u>
*Injection Pressure	1402 psig (MAXIMUM)	semi-monthly quarterly
Cumulative Injected Volume	daily	quarterly
Cumulative Produced Volume	daily	quarterly
Specific Gravity	monthly grab	quarterly
**Chemical Composition of Injected Fluid	quarterly grab	quarterly

SAMPLING LOCATION: The sampling location shall be at each injection pump discharge before the manifold system.

\*The limitation on wellhead pressure serves to prevent confining-formation fracturing. This limitation was calculated using the following formula:  

$$[ \{ 0.8 \text{ psi/ft} - (0.433 \text{ psi/ft})(\text{specific gravity}) \} \times \text{depth} ] - 14.7 \text{ psi} ]$$
 The maximum wellhead pressure is dependent upon depth and specific gravity of the injected fluid. The Salina Group at 5765 feet was used as the depth and a specific gravity of 1.28 was used for the injected fluid.

\*\*Chemical composition analysis shall include, but not be limited to, the following: Sodium, Calcium, Barium, Magnesium, Total Iron, Chloride, Sulfate, Carbonate, Bicarbonate, Sulfide, Total Dissolved Solids, pH, Resistivity (ohm-meters @ 75°F), and Specific Gravity.



Composition of Injected Fluids

The injection fluids to the solution mining wells will consist of the following:

- low quality solutions from the solution mining operation
- fresh water from water wells and site run-off from rainfall
- recycled solution from the refinery
- boiler blow down fluid
- facility purge and flush water

**Plugging and Abandonment Cementing Data**

1. The cavity shall be depressured until the well is completely dead.
2. Tubing will be run in and a bridge plug set at a point near the top of the injection zone in the 7" casing (5765 ft).
3. The 7" casing will be cut with an explosive cutter at the base of the 9 5/8" intermediate casing (5450 ft - top of cement) and removed.
4. Tubing will be rerun and the first cement plug will be set in the 7" casing above the bridge plug from 5765 ft to 5450 ft.
5. The tubing will be pulled up through the cement and the top of the plug will be tagged to verify its location.
6. Plugging of the 9 5/8" casing will continue using 50/50 Poz cement up to within 291 feet of surface in 600 foot increments.
7. A 60 sack plug of Class A cement will then be set from 291 feet to surface. The 9 5/8" steel casing will be cut off and capped 3' below surface.

**Summary:**

Set bridge plug at 5765' in 7" casing

Cut and remove top 5450' of 7" casing

1st plug	5765-5450'	Class A	75 sacks	
2nd plug	5450-291'	50/50 Poz	1700 sacks	600' increments
3rd plug	291-0'	Class A	60 sacks	



STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

MI-133-3G-A002

## PLUGGING AND ABANDONMENT PLAN

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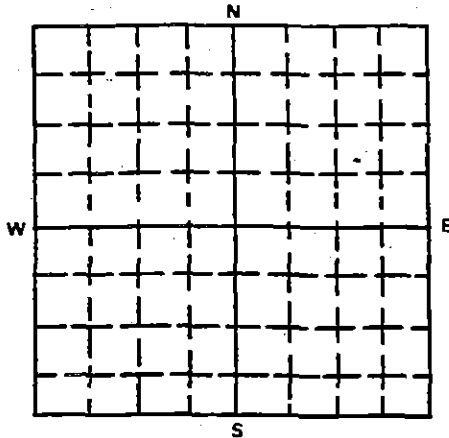
WELL NAME &amp; NUMBER, FIELD NAME, LEASE NAME &amp; NUMBER

Hersey Potash Facility  
Solution Mining Wells

NAME, ADDRESS, &amp; PHONE NUMBER OF OWNER/OPERATOR

Kalium Chemicals, Ltd.  
Suite 100, The East Tower, 2550 Golf Rd  
Rolling Meadows, IL 60008-4051

Locate Well And Outline Unit On  
Section Plat — 640 Acres



STATE

MI

COUNTY

Osceola

STATE PERMIT NUMBER

SURFACE LOCATION DESCRIPTION

LOCATE WELL IN TWO DIRECTIONS FROM NEAREST LINES OF QUARTER SECTION AND DRILLING UNIT

Surface  
Location \_\_\_\_\_ ft. From (N/S) \_\_\_\_\_ Line Of Quarter Section

And \_\_\_\_\_ ft. From (E/W) \_\_\_\_\_ Line Of Quarter Section

## TYPE OF AUTHORIZATION

- ☐ Individual Permit  
☐ Rule  
☒ Area Permit

Number of Wells \_\_\_\_\_  
In Area Permit 11

U.S.EPA Permit Number MI-133-3G-A002

## WELL ACTIVITY

- ☐ Class I  
☐ Hazardous  
☐ Nonhazardous  
☐ Class II  
☐ Brine Disposal  
☐ Enhanced Recovery  
☐ Hydrocarbon Storage  
☒ Class III  
☐ Class V

## CASING/TUBING/CEMENT RECORD AFTER PLUGGING AND ABANDONMENT

Size	Wt (lb/ft) TBG/CSG	Original Amount (CSG) (ft.)	CSG to be Left in Well (ft.)	Hole Size (in.)	Sacks Cement Used	Type
13 3/8"	54	900	900	17 1/2"	700	Lite/Class A
9 5/8"	40	5450	5450	12 1/4"	1700	Lite/Class A
7"	23-29	7800	2350	8 1/2"	350	Lite/Class A

## METHOD OF EMPLACEMENT OF CEMENT PLUGS

- ☐ The Balance Method  
☐ The Dump Bailer Method  
☐ The Two Plug Method  
☒ Other, Explain:

## CEMENT TO PLUG AND ABANDON DATA:

	Plug # 1	Plug # 2	Plug # 3	Plug #	Plug #	Plug #	Plug #
Size of Hole or Pipe in Which Plug Will Be Placed (inches)	7"	9 5/8"	9 5/8"				
Calculated Top of Plug (ft.)	5450	291	0				
Measured Top of Plug (ft.)							
Depth to Bottom of Plug (ft.)	5765	5450	291				
Sacks of Cement to be Used	75	1700	60				
Slurry Volume to be Used (cu. ft.)	81	2175	64				
Slurry Weight (lb./gal.)	15.6	14.5	15.6				
Type of Cement, Spacer or Other Material Used	Class A	50/50	Class A				
Type of Preflush Used	Brine	-- Poz	--				

## DESCRIPTION OF PLUGGING PROCEDURE

Plug 2 is continuous, placed in 600 foot increments bottom to top.  
Estimated cost/well = \$25,000

## ESTIMATED COST OF PLUGGING AND ABANDONMENT

Cement	\$	Cast Iron Bridge Plug	\$
Logging	\$	Cement Retainer	\$
Rig or Pulling Unit	\$	Miscellaneous	\$

## CERTIFICATION

*I certify under the penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment. (Ref. 40 CFR 144.32)*

NAME AND OFFICIAL TITLE (Please type or print)

Don J. Purvis  
President/Manager

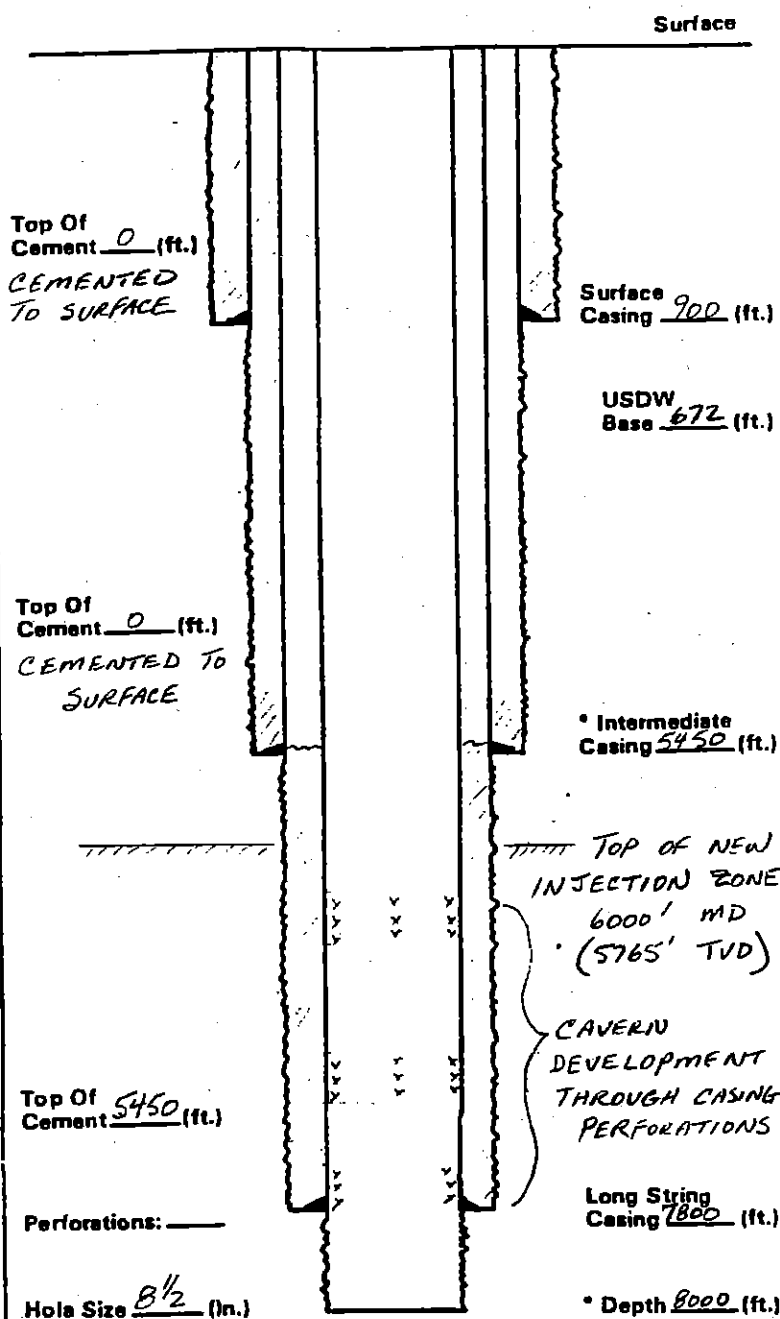
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DATE SIGNED

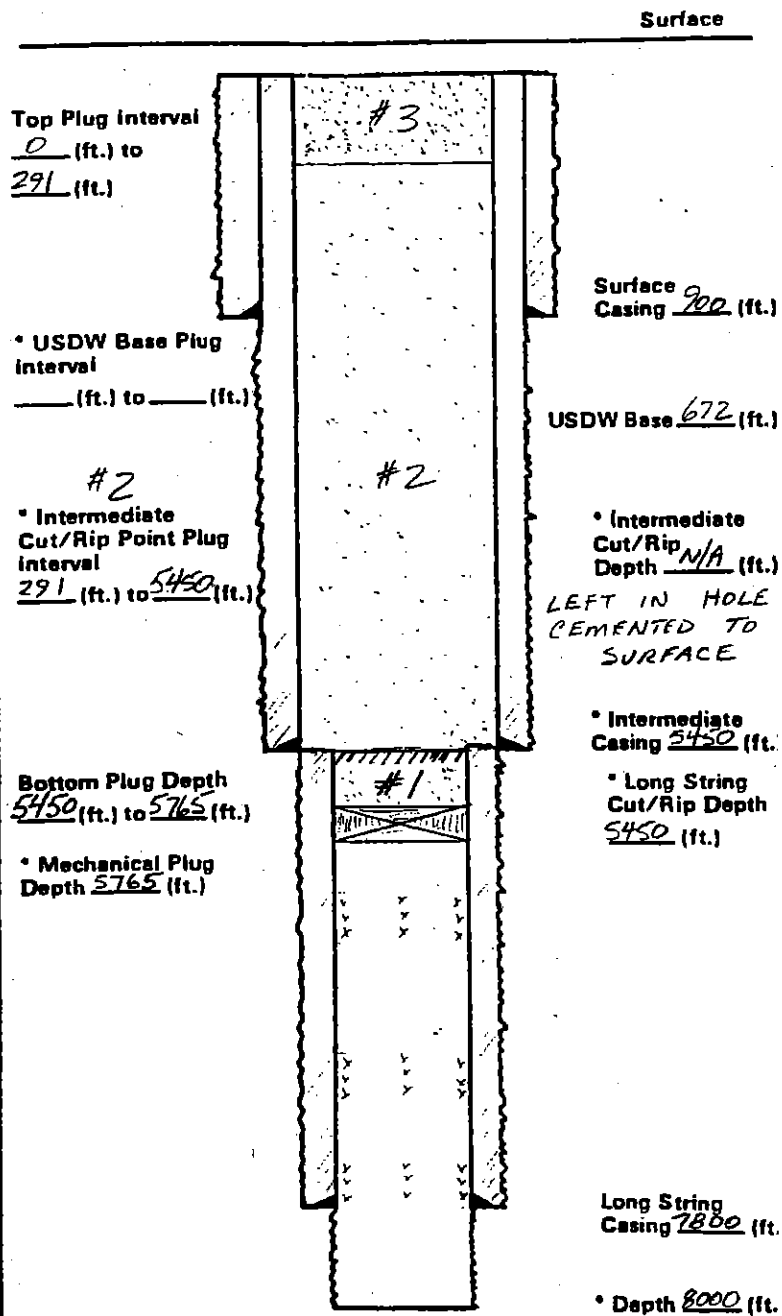
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## ORIGINAL WELL CONSTRUCTION DURING OPERATION

## PLUGGING AND ABANDONMENT CONSTRUCTION



• Add Any Additional Information  
• May Not Apply



PLUG #2 IS CONTINUOUS, PLACED IN 600 FT. INCREMENTS

• Add Any Additional Information  
• May Not Apply

## LIST OF ALL OPEN AND/OR PERFORATED INTERVALS AND INTERVALS WHERE CASING WILL BE VARIED

Specify Open Hole/Perforations/Varied Casing	From	To	Formation Name

CORRECTIVE ACTION PLAN

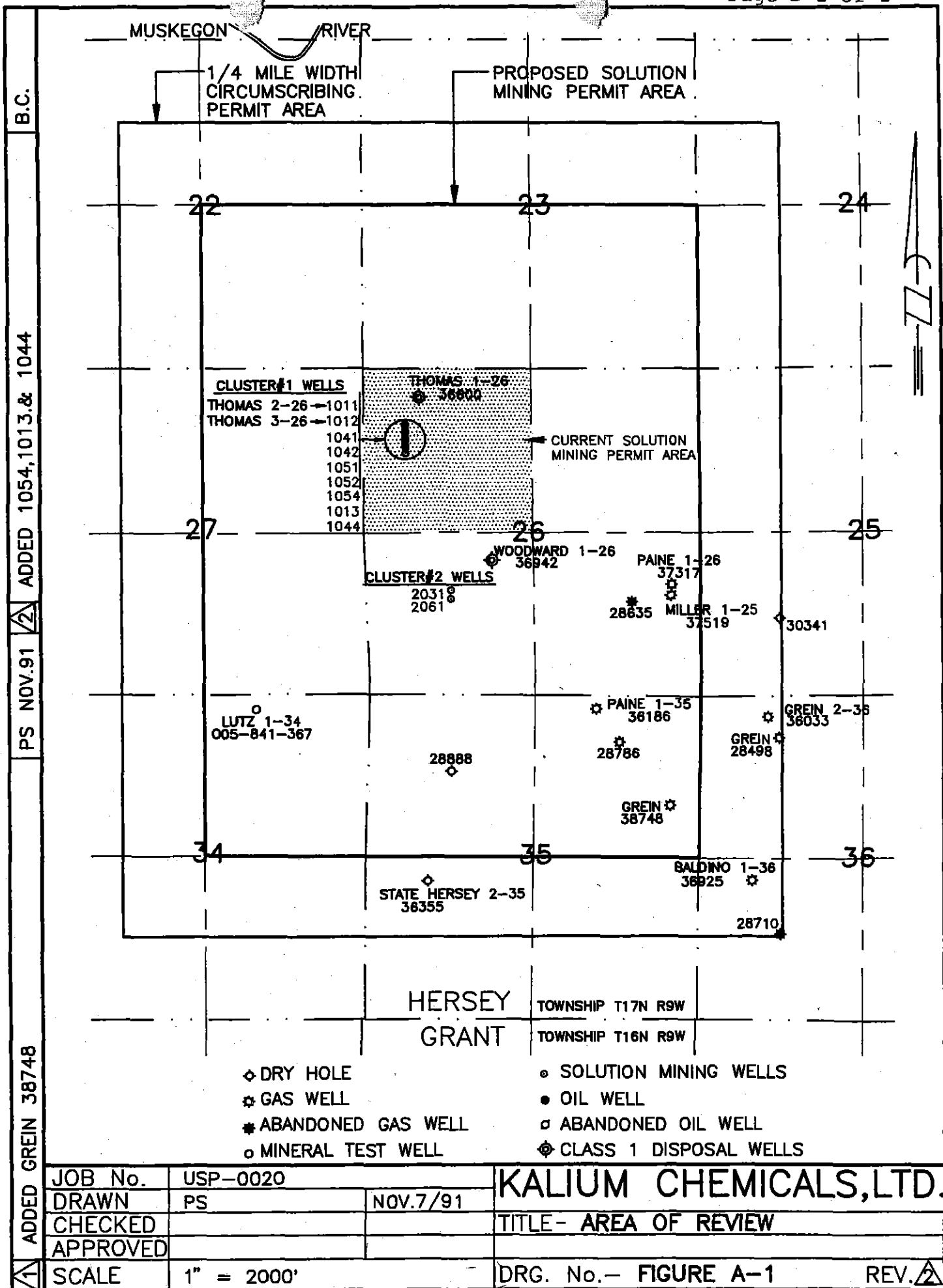
No corrective action is required at this time

**Names and Locations of Wells Authorized Under This Permit**

<u>Well Name</u>	<u>Surface Location</u>
1. KCL 1011	SE/4-NW/4-NW/4 of section 26-T17N-R9W
2. KCL 1012	SE/4-NW/4-NW/4 of section 26-T17N-R9W
3. KCL 1041	SW/4-NW/4-NW/4 of section 26-T17N-R9W
4. KCL 1042	SW/4-NW/4-NW/4 of section 26-T17N-R9W
5. KCL 1051	SW/4-NW/4-NW/4 of section 26-T17N-R9W
6. KCL 1052	SW/4-NW/4-NW/4 of section 26-T17N-R9W
7. KCL 2031	W Line-NE/4-SW/4 of section 26-T17N-R9W
8. KCL 2061	N/2-SW/4 of section 26-T17N-R9W
9. KCL 1054	SW/4-NW/4-NW/4 of section 26-T17N-R9W
10. KCL 1013	SW/4-NW/4-NW/4 of section 26-T17N-R9W
11. KCL 1044	SW/4-NW/4-NW/4 of section 26-T17N-R9W

The solution mining injection wells will be limited to the following area:

The SE/4 of Section 22, the S/2 of Section 23, the E/2 of Section 27, all Section 26, the NE/4 of Section 34, the N/2 of Section 35, all in Township 17W, Range 9W.



COMPLAINANT'S  
EXHIBIT 3





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

WD-17J

SEP 15 1992

~~SEP 16 1992~~

CERTIFIED MAIL P 559 848 441

RETURN RECEIPT REQUESTED

Mr. Robert C. Schweitzer  
Kalium Chemicals, Ltd.  
11461 South 135th Street  
P.O. Box 333  
Hersey, Michigan 49639

Re: Authorization to Inject into the Following Well:

Kalium Hersey 1013, MDNR Permit #385-924-767, (United States  
Environmental Protection Agency (USEPA) Permit #MI-133-3G-A002) in  
Osceola County, Michigan

Dear Mr. Schweitzer:

The results of the mechanical integrity demonstration and the  
completion report for the above-referenced well have been reviewed and  
have been found to be satisfactory. In accordance with permit conditions,  
Kalium Chemicals, Ltd. of Rolling Meadows, Illinois is authorized to commence  
injection into the above-referenced well.

Should you have any questions regarding the above information, feel free  
to contact Patrick Saieh at (312) 886-4240.

Sincerely yours,

*Richard J. Zdanowicz*  
For

Richard J. Zdanowicz, Chief  
Underground Injection Control Section

cc: William Lee, Michigan Department of Natural Resources  
Charles Brown, The Cadmus Group

receipt card, Form 3811, and attach it to the front of the article. Endorse front of article RETURN RECEIPT REQUESTED. Otherwise, affix to back of article. Endorse front of the addressee, endorse adjacent to the number.  
4. If you want delivery restricted to the addressee, or to an authorized agent of the addressee, endorse RESTRICTED DELIVERY on the front of the article.



1829/13/25

WD-17J

Mr. Lawrence E. Bean  
Kalium Chemicals, Ltd.  
11461 South 135th Avenue  
Hersey, Michigan 49639

MDNR Permit #M394 (United States Environmental Protection Agency (USEPA) Permit #MI-133-3G-A002) in Osceola County, Michigan

The results of the mechanical integrity demonstration and the completion report for the above-referenced well have been reviewed and have been found to be satisfactory. In accordance with permit conditions, Kalium Chemicals, Ltd. of Hersey, Michigan is authorized to commence injection into the above-referenced well.

Sincerely yours,

cc: Thomas Godbold, Michigan Department of Natural Resources  
Charles Brown, The Cadmus Group

NCH  
 Fern  
 RJZ  
 6/12/95  
 NCH  
 6/12/95  
 Natural Resources  
 FH  
 6/12/95  
 Jw 6/12  
 P.S. 6/12/95

April 28, 1995

WD-17J

**CERTIFIED MAIL P 140 825 105**  
**RETURN RECEIPT REQUESTED**

Mr. Lawrence E. Bean  
Kalium Chemicals, Ltd.  
11461 South 135th Avenue  
Hersey, Michigan 49639

Re: Authorization to Inject into the Following Well:

Well #1032, MDNR Permit #M397 (United States Environmental Protection Agency (USEPA) Permit #MI-133-3G-A002) in Osceola County, Michigan

Dear Mr. Bean:

The results of the mechanical integrity demonstration and the completion report for the above-referenced well have been reviewed and have been found to be satisfactory. In accordance with permit conditions, Kalium Chemicals, Ltd. of Hersey, Michigan is authorized to commence injection into the above-referenced well.

Should you have any questions regarding the above information, feel free to contact Patrick Saieh at (312) 886-4240.

Sincerely yours,

Richard J. Zdanowicz, Chief  
Underground Injection Control Section

cc: Thomas Godbold, Michigan Department of Natural Resources  
Charles Brown, The Cadmus Group

bcc: Lisa Perenchio, Enforcement Unit  
Administrative File

Office  
If you want this receipt postmarked, stick the gummed stub to the right of the return address leaving the receipt attached and present the article at a post office service window or hand it to your retail carrier (no extra charge).  
2. If you do not want this receipt postmarked, stick the gummed stub in the address of the article, date, detach and retain.

(Reverse)

RLH  
4/27/95

MSH  
SAR  
P.S. 4/26/95  
PJS  
4/27/95

FH  
4/27/95  
RM  
4/26/95  
for DW

MAR. 04 1997

WD-17J

**CERTIFIED MAIL P 140 825 691**  
**RETURN RECEIPT REQUESTED**

Mr. Lawrence E. Bean  
Kalium Chemicals, Ltd.  
11461 South 135th Avenue  
Hersey, Michigan 49639

**Re: Authorization to Inject into the Following Well:**

**Well #1044, MDNR Permit #391-934-767, (United States  
Environmental Protection Agency (USEPA) Permit #MI-133-3G-A002)  
in Osceola County, Michigan**

Dear Mr. Bean:

The results of the mechanical integrity demonstration and the completion report for the above-referenced well have been reviewed and have been found to be satisfactory. In accordance with permit conditions, Kalium Chemicals, Ltd. of Hersey, Michigan is authorized to commence injection into the above-referenced well.

Should you have any questions regarding the above information, feel free to contact Patrick Saieh at (312) 886-4240.

Sincerely yours,

Richard J. Zdanowicz, Chief  
Underground Injection Control Section

cc: William Lee, Michigan Department of Natural Resources  
Charles Brown, The Cadmus Group

008E

3. If you want a return receipt, write the certified mail number and your name on the return receipt card, Form 3811, and attach it to the front of the article by means of the gummed ends of the card. Otherwise, the back of the card will be used for a return receipt. REQUESTED adjacent to the front of the article.

4. If you want delivery restricted to the addressee, or to an authorized agent of the addressee, endorse RESTRICTED DELIVERY on the front of the article.

THOMSON  
MICROFILM

SEP 17 1993

WD-17J

**CERTIFIED MAIL P 106 495 106**  
**RETURN RECEIPT REQUESTED**

Mr. Lawrence E. Bean  
Kalium Chemicals, Ltd.  
11461 South 135th Avenue  
Hersey, Michigan 49639

**Re: Authorization to Inject into the Following Well:**

Well [REDACTED], MDNR Permit #387-934-767, (United States  
Environmental Protection Agency (USEPA) Permit #MI-133-3G-A002)  
in Osceola County, Michigan

Dear Mr. Bean:

The results of the mechanical integrity demonstration and the completion report for the above-referenced well have been reviewed and have been found to be satisfactory. In accordance with permit conditions, Kalium Chemicals, Ltd. of Hersey, Michigan is authorized to commence injection into the above-referenced well.

Should you have any questions regarding the above information, feel free to contact Patrick Saieh at (312) 886-4240.

Sincerely yours,

Richard J. Zdanowicz, Chief  
Underground Injection Control Section

cc: William Lee, Michigan Department of Natural Resources  
Charles Brown, The Cadmus Group

3. If you want a return receipt, write the certified mail number and your name and address on a return receipt card, Form 3811, and attach it to the front of the article by means of the gummed ends if space permits. Otherwise, affix to back of article Endorse front of article **RETURN RECEIPT REQUESTED** adjacent to the number.

4. If you want delivery restricted to the addressee, or to an authorized agent of the addressee, endorse **RESTRICTED DELIVERY** on the front of the article.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

NOV 01 2002

REPLY TO THE ATTENTION OF  
WU-16J

CERTIFIED MAIL 7099 3400 0000 9587 6412  
RETURN RECEIPT REQUESTED

Mr. Leonard Kaskiw  
IMC Potash Hersey Inc.  
1395 135th Avenue  
Hersey, Michigan 49639

Re: Authorization to Inject into the Following Wells:

KCL #1061, MDEQ Permit #M-474 and KCL #1062, MDEQ Permit #M-475  
(United States Environmental Protection Agency (USEPA) Permit  
#MI-133-3G-A002) in Osceola County, Michigan

Dear Mr. Kaskiw:

The results of the mechanical integrity demonstration and the completion reports for the wells referenced above have been reviewed and have been found to be satisfactory. In accordance with permit conditions, IMC Potash Hersey Inc. of Hersey, Michigan is authorized to commence injection into the wells referenced above.

Should you have any questions regarding the above information, feel free to contact Patrick Saieh at (312) 886-4240.

Sincerely yours,

  
Sally K. Swanson, Acting Chief  
Underground Injection Control Branch

cc: Raymond Vugrinovich, Michigan Department of Environmental Quality

P.S. 11/1/02

For an additional fee, a Return Receipt may be requested to provide proof of delivery. To obtain Return Receipt service, please complete and attach a Return Receipt (PS Form 3811) to this article and add applicable postage to cover the fee. Endorsee mailpieces "Return Receipt Requested". To receive a fee waiver for a duplicate return receipt, a USPS postmark on your Certified Mail receipt is required.  
For an additional fee, delivery may be restricted to the addressee or addressee's authorized agent. Advise the clerk or mark the mailpiece with the endorsement "Restricted Delivery".

JUN 12 1996

WU-17J

**CERTIFIED MAIL 2 075 010 520**  
**RETURN RECEIPT REQUESTED**

Mr. Kyle Barbot  
Kalium Chemicals, Ltd.  
1395 135th Avenue  
Hersey, Michigan 49639

Re: Authorization to Inject into the Following Wells:

Kalium [REDACTED] MDEQ Permit #006-851-367 and Kalium [REDACTED] MDEQ Permit  
#005-851-367 (United States Environmental Protection Agency (USEPA)  
Permit #MI-133-3G-A002) in Osceola County, Michigan

Dear Mr. Barbot:

The results of the mechanical integrity demonstration and the completion reports for the above-referenced wells have been reviewed and have been found to be satisfactory. In accordance with permit conditions, Kalium Chemicals, Ltd. of Hersey, Michigan is authorized to commence injection into the above-referenced wells.

Should you have any questions regarding the above information, feel free to contact Patrick Saieh at (312) 886-4240.

Sincerely yours,

Rebecca L. Harvey, Chief  
Underground Injection Control Branch

cc: Thomas Godbold, Michigan Department of Environmental Quality  
Charles Brown, The Cadmus Group

WU-17J:P.Saieh:ps:5/9/96:f:/authKal

*Auth Rec*

*6/12/96*

*PC 6/12/96*

*P.S. 6/12/96*

UNITED STATES OF AMERICA  
ENVIRONMENTAL PROTECTION  
AGENCY  
77 WEST JACKSON BLVD.





DEC 13 2000

CERTIFIED MAIL 7099 3400 0000 9591 5425

RETURN RECEIPT REQUESTED

WU-16J

Mr. Kyle Barbot  
IMC Potash Hersey Inc.  
1395 135th Avenue  
Hersey, Michigan 49639

Re: Authorization to Inject into the Following Wells:

Kalium 2041A, MDEQ Permit #M-448 and Kalium 2042, MDEQ Permit #M-449  
(United States Environmental Protection Agency (USEPA) Permit  
#MI-133-3G-A002) in Osceola County, Michigan

Dear Mr. Barbot:

The results of the mechanical integrity demonstration and the completion reports for the wells referenced above have been reviewed and have been found to be satisfactory. In accordance with permit conditions, IMC Potash Hersey Inc. of Hersey, Michigan is authorized to commence injection into the wells referenced above.

Should you have any questions regarding the above information, feel free to contact Patrick Saieh at (312) 886-4240.

Sincerely yours,

Valerie J. Jones, Chief  
Underground Injection Control Branch

cc: Raymond Vugrinovich, Michigan Department of Environmental Quality

*[Handwritten signature]*  
12/13/00

P.S. 12/13/00

MAY 21 1998

WU-16J

CERTIFIED MAIL P 140 889 099  
RETURN RECEIPT REQUESTED

Mr. Paul McMillen  
IMC Kalium, Ltd.  
1395 135th Avenue  
Hersey, Michigan 49639

Re: Authorization to Inject into the Following Wells:

Kalium 2081, MDEQ Permit #M-437 and Kalium ~~2082~~, MDEQ Permit #M-438  
(United States Environmental Protection Agency (USEPA) Permit  
#MI-133-3G-A002) in Osceola County, Michigan

Dear Mr. McMillen:

The results of the mechanical integrity demonstration and the completion reports for the above-referenced wells have been reviewed and have been found to be satisfactory. In accordance with permit conditions, IMC Kalium, Ltd. of Hersey, Michigan is authorized to commence injection into the above-referenced wells.

Should you have any questions regarding the above information, feel free to contact Patrick Saieh at (312) 886-4240.

Sincerely yours,

Rebecca L. Harvey, Chief  
Underground Injection Control Branch

cc: Thomas Godbold, Michigan Department of Environmental Quality

return receipt  
original in U  
2081

NW  
for RLH  
5/21/98

JH  
5/21/98

**COMPLAINANT'S  
EXHIBIT 4**

## REVIEW OF TEMPERATURE LOGS FOR PART (2) OF MI

Facility Name		Operator	
Hersey		Mosaic Potash Hersey	
Well Name	Test ID Number	USEPA Permit Number	Analyst
#1031	2006-095	MI-133-3G-A002	Patterson
County	State	Test Date	Analysis Date
Osceola	Michigan	December 8, 2006	January 19, 2007

### Well and Operational Information

Long String Casing Length, ft	Tubing Depth, ft	Date of Last Injection	Is this a Multi-zone Facility?
7862	unknown	December 6, 2006	no
Depth to Base of USDW, ft.	Name of Lowermost USDW	Hour of Last Injection	Other Zones Used at Facility
725	Glacial Drift	07:45	N/A
Depth to Top of Permitted IZ, ft	Name of Injection Zone	Volume Injected in Past Year, gal	Name of Shallower Injection Zone
5765	Salina	used for production	N/A
Plugged Back Depth, ft.	Total Depth, ft	Does Injectate Temperature vary?	Depth to Shallower Injection Zone, ft
7970	7970	unknown	N/A

### Calibration Information

Low Gauge Temp, deg F	High Gauge Temperature, deg. F
73.8	105.7
Low Thermometer Temp, deg. F	High Thermometer Temp, deg. F
71.6	103.4
Were Log Readings Adjusted?	Overall Appearance Good?
no	yes

### Logging Information

Time of start of Logging	For Data Plot, Data Interval, ft
06:50	5
Hours since injection	Max Log Depth, ft.
48	6470
Multiple Log Runs?	Maximum Logging Speed, ft/min
yes	31.8

### Observations

Depth to Liquid Level, ft	Top of Receptive Strata, ft.	Depth of Most Extreme temperature in wellbore not affected by injection	Depth of Most Extreme temp in IZ, ft
surface	N/A	NDE	NDE
Temperature at Total Depth, deg F	Bottom of Receptive Strata, ft.	Most Extreme Temp above IZ, deg F	Most Extreme Temp in IZ, deg F
140.13	N/A	0.00	N/A
Top of Receptive Strata to top of IZ, ft	Thickness of Receptive Interval, ft		
N/A	N/A		

### Analysis

Is a Log Available for Comparison?	Are traces Essentially Congruent?	Depths of Intervals with Constant Temp over more than 50 ft. present?	
YES	no	yes	
What Well Log Used?	Is there a Pivot Point	Top of Interval #1, ft	Top of Interval #2, ft
1061	no	4010	
What Year?	If yes, What depth? ft	Bottom of Interval #1, ft	Bottom of Interval #2, ft
2002	N/A	4405	
	If Yes, What Temp? deg F	Is Constant Temp More or Less than Temp Above?	
	N/A	Less	
		Does this Suggest Flow?	Does this Suggest Flow?
		NO	

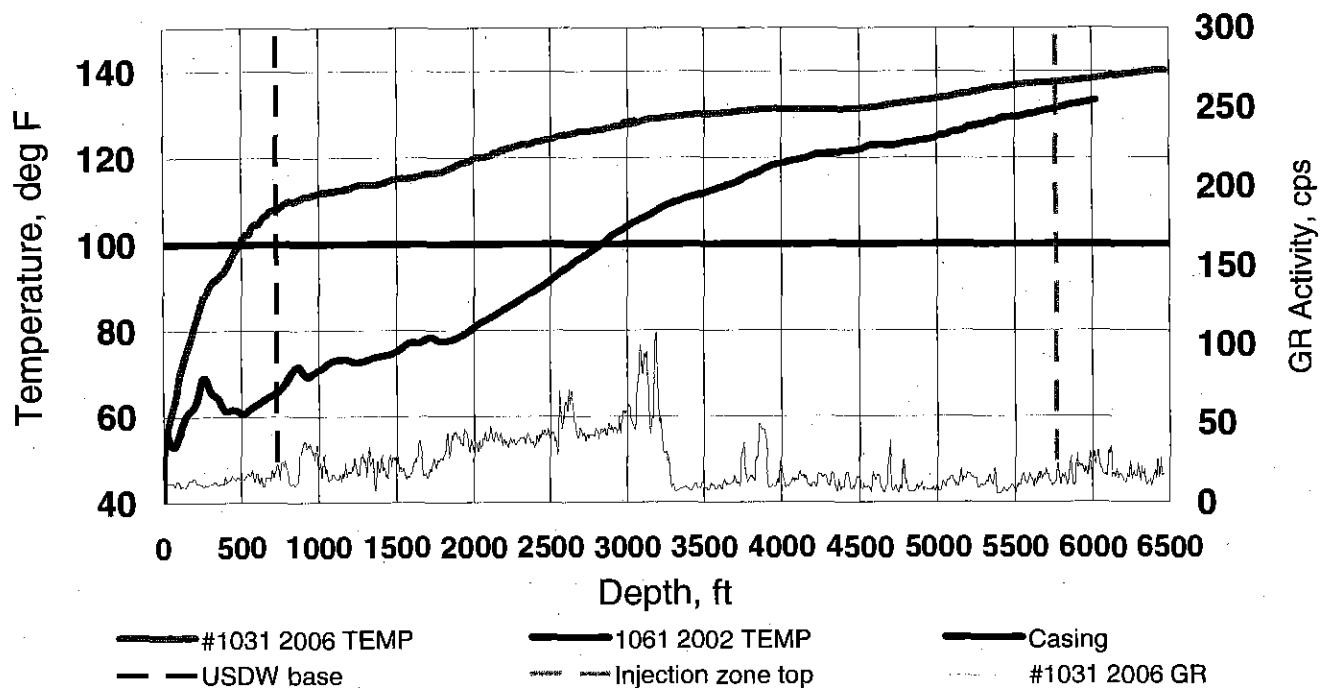
### Comments

The well has been used for production, causing the constant temperature along much of the wellbore.

### Does the Well Have External Mechanical Integrity?

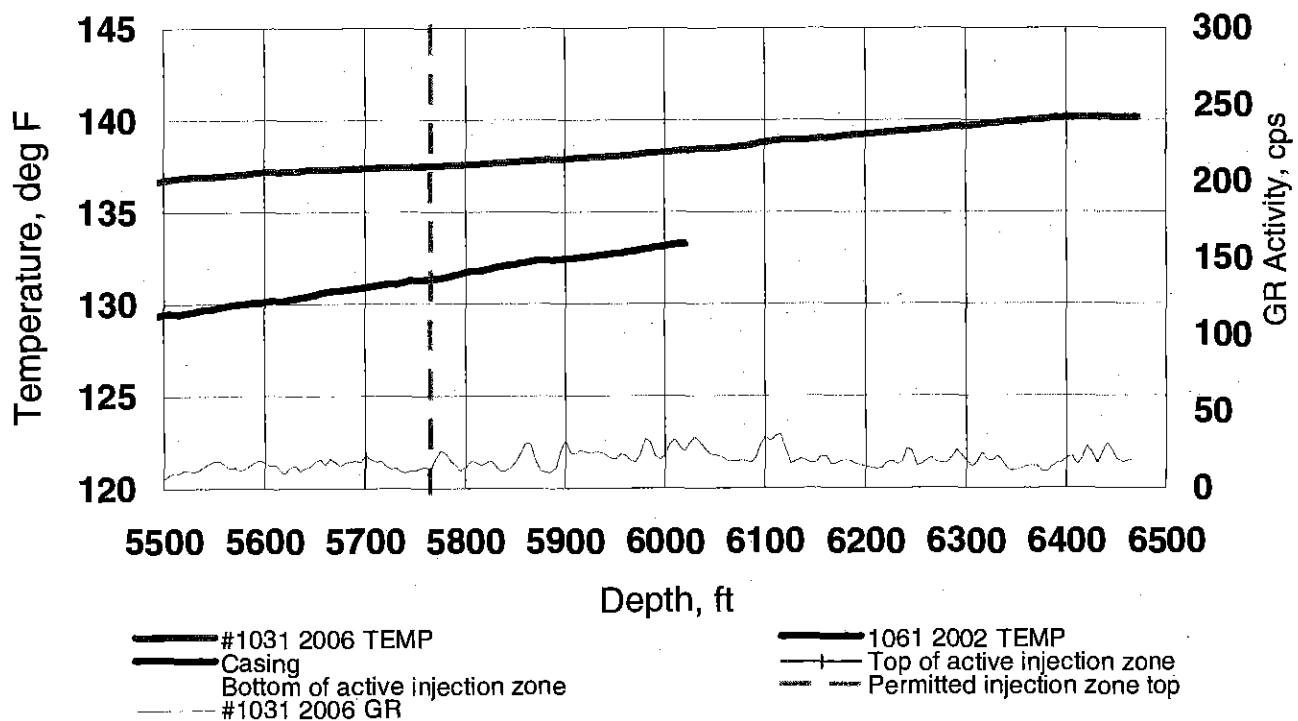
**YES**

### Mosaic Potash Hersey #1031



The 1031 well was recently used for extraction, so it shows much warming in the wellbore below about 500 feet.

### DETAIL OF INJECTION AND CONFINING ZONES



## REVIEW OF TEMPERATURE LOGS FOR PART (2) OF MI

Facility Name Hersey		Operator Mosaic Potash Hersey	
Well Name #1031		USEPA Permit Number MI-133-3G-A002	Analyst Patterson
County Osceola	State Michigan	Test Date December 8, 2006	Analysis Date January 19, 2007

### COMMENTS

The log trace supplied by Michigan Wireline shows four small peaks at 2970', 2980', 3005', and 3040'. These unexplained peaks are similar to others seen in the Mosaic wells tested this year. On the first repeat pass of this section, a slightly larger, irregular peak was recorded at 3030'. On the second repeat pass, three small peaks were recorded at 2970', 3010', and 3030'. The cause and the nonreproducibility of the peaks is unknown, but mechanical integrity does not appear to be affected.

## REVIEW OF TEMPERATURE LOGS FOR PART (2) OF MI

Facility Name		Operator	
Hersey		Mosaic Potash Hersey	
Well Name	Test ID Number	USEPA Permit Number	Analyst
#1041	2006-080	MI-133-3G-A002	Patterson
County	State	Test Date	Analysis Date
Osceola	Michigan	November 22, 2006	December 12, 2006

### Well and Operational Information

Long String Casing Length, ft	Tubing Depth, ft	Date of Last Injection	Is this a Multi-zone Facility?
7898	0	November 20, 2006	no
Depth to Base of USDW, ft.	Name of USDW	Hour of Last Injection	Other Zones Used at Facility
800	Glacial Drift	21:00	N/A
Depth to Top of Permitted IZ, ft.	Name of Injection Zone	Volume Injected in Past Year, gal	Name of Shallower Injection Zone
5765	0	unknown	N/A
Plugged Back Depth, ft.	Total Depth, ft	Does Injectate Temperature vary?	Depth to Shallower Injection Zone, ft
7950	7950	no	N/A

### Calibration Information

Low Gauge Temp, deg F	High Gauge Temperature, deg. F
35.1	108.4
Low Thermometer Temp, deg. F	High Thermometer Temp, deg. F
34.1	107.5
Were Log Readings Adjusted?	Overall Appearance Good?
NO	Yes

### Logging Information

Time of start of Logging	For Data Plot, Data Interval, ft
12:40	2
Hours since Injection	Max Log Depth, ft.
41	6510.00
Multiple Log Runs?	Maximum Logging Speed, ft/min
Yes	33.4

### Observations

Depth to Liquid Level, ft	Depth to top of Active Injection, ft	Active IZ - top permitted IZ, ft	Temperature at Total Depth, deg F
Surface	indeterminate	N/A	138.69
Base Affected by Surface Effects, ft	Shallow Bedrock Temperature, deg F	Depth of Most Extreme temp above	Most Extreme Temp above IZ, deg F
indeterminate	#N/A	NA	0.00
Top of conductivity effect above IZ, ft	Deep Temp. Unaffected by Injection	Depth of Most Extreme temp in IZ, ft	Most Extreme Temp in IZ, deg F
6510	0.00	6510	138.69
Calculated Temp at Surface, deg F	Average Gradient, F/100 ft		
#N/A	#N/A		

### Analysis

Is a Log Available for Comparison?	Are traces Essentially Congruent?	Depths of Intervals with Constant Temp over more than 50 ft. present?	
Yes	Yes	NO	
What Well Log Used?	Is there a Pivot Point	Top of Interval #1, ft	Top of Interval #2, ft
1061	No	N/A	N/A
What Year?	If yes, What depth? ft	Bottom of Interval #1, ft	Bottom of Interval #2, ft
2002	NA	N/A	N/A
Top of Receptive Strata, ft.	If Yes, What Temp? deg F	Is Constant Temp More or Less than Temp Above?	
NA	0.00	N/A	N/A
Bottom of Receptive Strata, ft.	Thickness of Receptive Interval, ft	Does this Suggest Flow?	Does this Suggest Flow?
NA	#VALUE!	N/A	N/A

### Comments

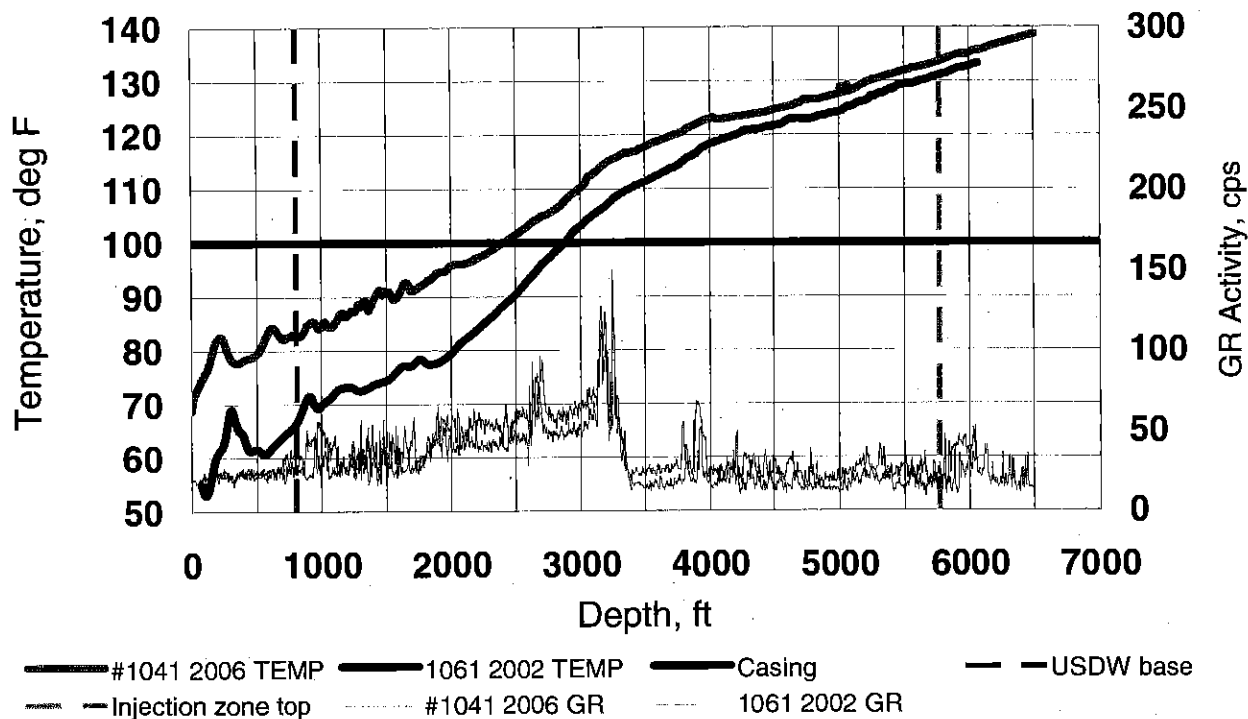
Although the log has some unexplained anomalies, they do not appear to indicate a loss of mechanical integrity.

### Does the Well Have External Mechanical Integrity?

**YES**

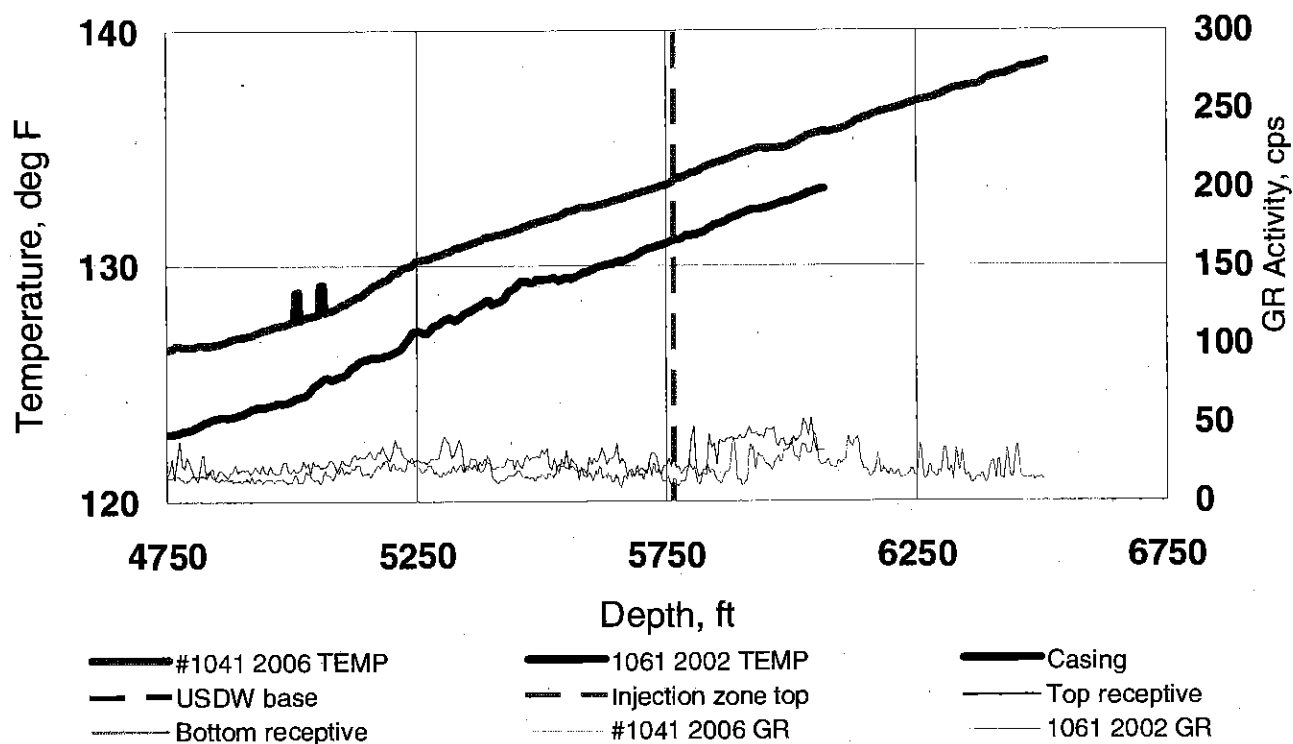


### Mosaic Potash Hersey #1041



The profile is very irregular above about 1700'.

### DETAIL OF INJECTION AND CONFINING ZONES



Two small, unexplained peaks appear at 5010' and 5060'.

Comparison log is 1061 2002

## REVIEW OF TEMPERATURE LOGS FOR PART (2) OF MI

Facility Name Hersey		Operator Mosaic Potash Hersey	
Well Name #1041		USEPA Permit Number MI-133-3G-A002	Analyst Patterson
County Osceola	State Michigan	Test Date November 22, 2006	Analysis Date December 12, 2006

### COMMENTS

Although 143 degree fluid was injected 2 days prior to the test, a zone of active injection is not apparent.

In the main log, small sharp peaks are recorded at ~5010' and 5060'. On repeat runs of these depths, a peak was recorded at 4985, and then at 4975' and 5000'. The explanation offered is that it has something to do with the fluid inside the casing, but this is not further explained. On the first repeat pass, a peak was noted at 4985'. On the second repeat pass, peaks were recorded at 4975' and 5000'.

## REVIEW OF TEMPERATURE LOGS FOR PART (2) OF MI

Facility Name <b>Hersey</b>		Operator <b>Mosaic Potash Hersey</b>	
Well Name <b>#1042</b>	Test ID Number <b>2006-096</b>	USEPA Permit Number <b>MI-133-3G-A002</b>	Analyst <b>William Bates</b>
County <b>Osceola</b>	State <b>Michigan</b>	Test Date <b>December 14, 2006</b>	Analysis Date <b>January 18, 2007</b>

### Well and Operational Information

Long String Casing Length, ft <b>7898</b>	Tubing Depth, ft <b>0</b>	Date of Last Injection <b>May 1, 1995</b>	Is this a Multi-zone Facility? <b>Yes</b>
Depth to Base of USDW, ft. <b>800</b>	Name of Lowermost USDW <b>Glacial Drift</b>	Hour of Last Injection	Other Zones Used at Facility <b>Reed City Dolomite</b>
Depth to Top of Permitted IZ, ft <b>5765</b>	Name of Injection Zone <b>Salina</b>	Volume Injected in Past Year, gal	Name of Shallower Injection Zone <b>Reed City Dolomite</b>
Plugged Back Depth, ft. <b>8116</b>	Total Depth, ft <b>8116</b>	Does Injectate Temperature vary? <b>Not Much</b>	Depth to Shallower Injection Zone, ft. <b>4000</b>

### Calibration Information

Low Gauge Temp, deg F <b>62.7</b>	High Gauge Temperature, deg. F <b>104.9</b>
Low Thermometer Temp, deg. F <b>61.2</b>	High Thermometer Temp, deg. F <b>103.3</b>
Were Log Readings Adjusted? <b>No</b>	Overall Appearance Good? <b>Yes</b>

### Logging Information

Time of start of Logging	For Data Plot, Data Interval, ft <b>5</b>
Days since last injection <b>4245</b>	Max Log Depth, ft. <b>5855</b>
Multiple Log Runs? <b>Yes</b>	Maximum Logging Speed, ft/min <b>30</b>

### Observations

Depth to Liquid Level, ft <b>85</b>	Top of Receptive Strata, ft. <b>N/A</b>	Depth of Most Extreme temp above <b>5810</b>	Depth of Most Extreme temp in IZ, ft <b>5850</b>
Temperature at Total Depth, deg F <b>132.31</b>	Bottom of Receptive Strata, ft. <b>N/A</b>	Most Extreme Temp above IZ, deg F <b>132.11</b>	Most Extreme Temp in IZ, deg F <b>132.32</b>
Top of Receptive Strata to top of IZ, ft <b>NA</b>	Thickness of Receptive Interval, ft <b>NA</b>		

### Analysis

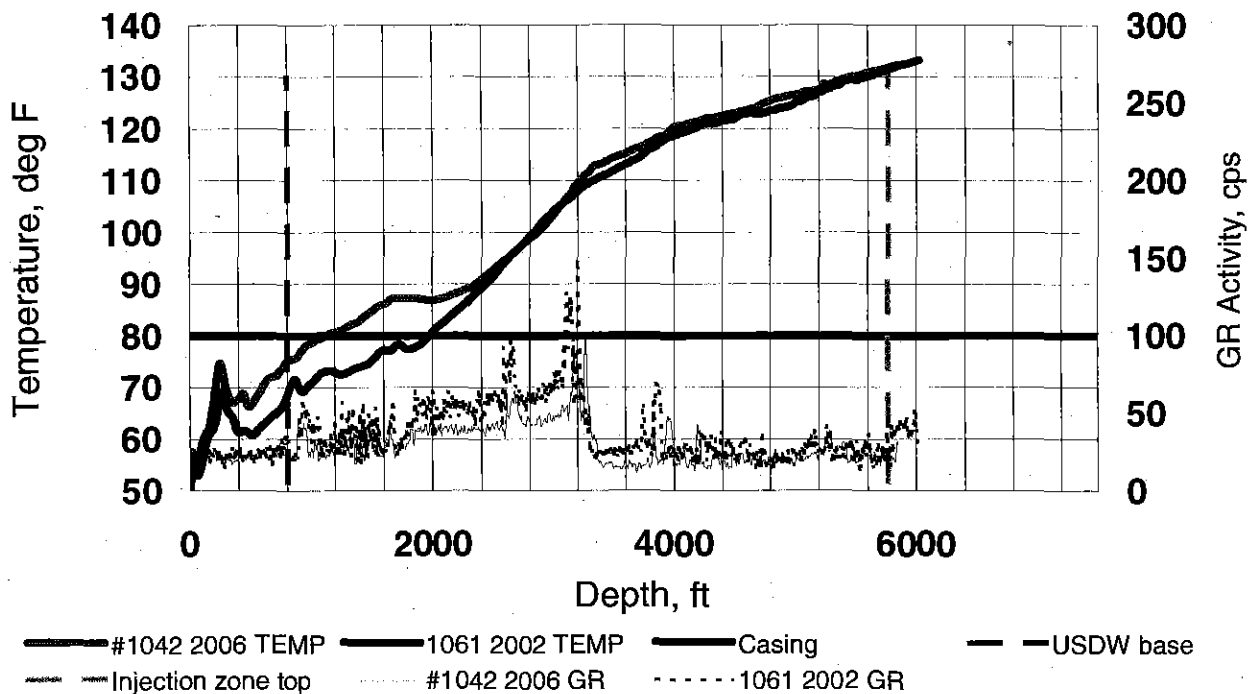
Is a Log Available for Comparison? <b>Yes</b>	Are traces Essentially Congruent? <b>Yes</b>	Depths of Intervals with Constant Temp over more than 50 ft. present? <b>N/A</b>	
What Well Log Used? <b>1061</b>	Is there a Pivot Point <b>N/A</b>	Top of Interval #1, ft <b>N/A</b>	Top of Interval #2, ft <b>N/A</b>
What Year? <b>2002</b>	If yes, What depth? ft <b>N/A</b>	Bottom of Interval #1, ft <b>N/A</b>	Bottom of Interval #2, ft <b>N/A</b>
	If Yes, What Temp? deg F <b>N/A</b>	Is Constant Temp More or Less than Temp Above? <b>N/A</b>	<b>N/A</b>
		Does this Suggest Flow? <b>N/A</b>	Does this Suggest Flow? <b>N/A</b>

Comments

**Does the Well Have External Mechanical Integrity?**

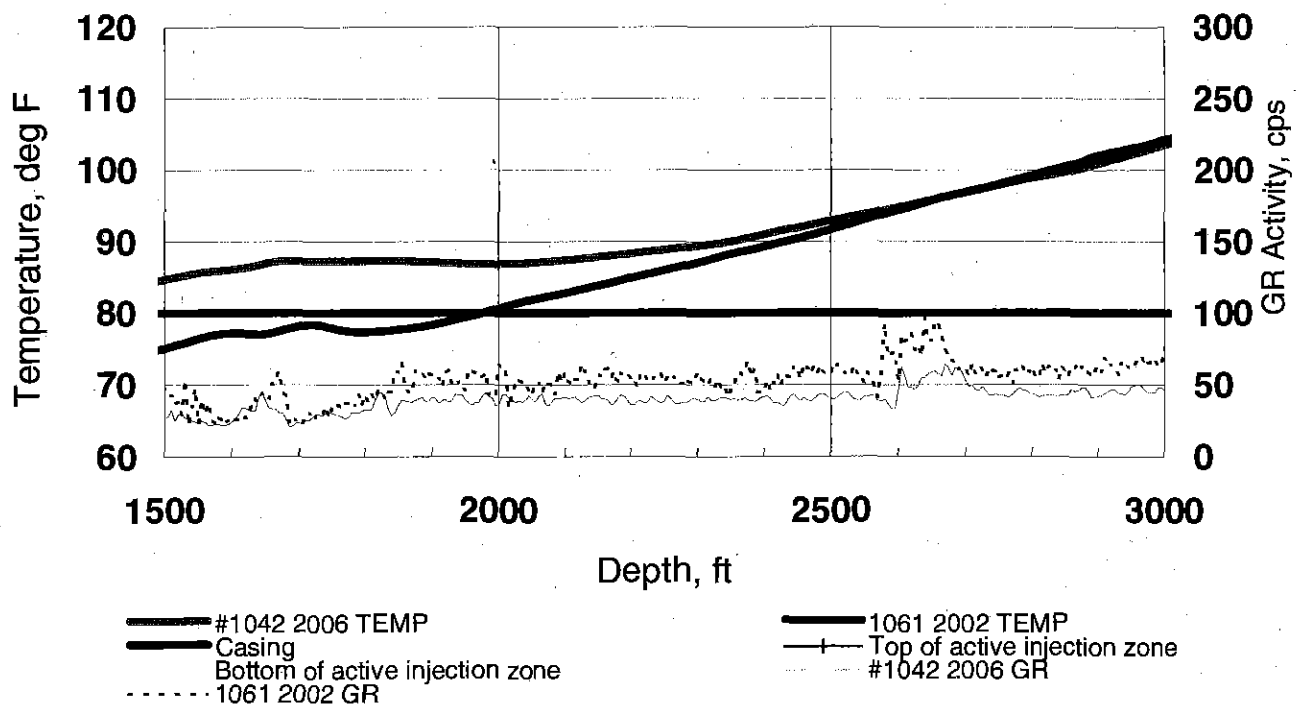
**YES**

### Mosaic Potash Hersey #1042



The spike at 265 does not correlate with the gamma ray log. From 1810 to about 2395 there is a dip in the temperature log that does not correlate to the gamma ray log.

### DETAIL OF TEMPERATURE LOG FROM 1500 TO 3000 FT



## REVIEW OF TEMPERATURE LOGS FOR PART (2) OF MI

Facility Name <b>Hersey</b>		Operator <b>Mosaic Potash Hersey</b>	
Well Name <b>#1042</b>		USEPA Permit Number <b>MI-133-3G-A002</b>	Analyst <b>William Bates</b>
County <b>Osceola</b>	State <b>Michigan</b>	Test Date <b>December 14, 2006</b>	Analysis Date <b>January 18, 2007</b>

### COMMENTS

In general, the temperature increases with depth in this well. There is an anomaly are about 260 ft. There also is an area of nearly constant temperature between 1810 and 2395 ft. The feature is not understood, but does not likely indicate MI failure.

# **REVIEW OF TEMPERATURE LOGS FOR PART (2) OF MI**

Facility Name <b>Mosaic Potash, LLC</b>		Operator <b>Mosaic Potash, LLC</b>	
Well Name <b>1044</b>	Test ID Number <b>2006-081</b>	USEPA Permit Number <b>MI-133-3G-A002</b>	Analyst <b>Bill Bates</b>
County <b>Osceola</b>	State <b>Michigan</b>	Test Date <b>November 22, 2006</b>	Analysis Date <b>December 20, 2006</b>

## **Well and Operational Information**

Long String Casing Length, ft <b>7934</b>	Tubing Depth, ft <b>0</b>	Date of Last Injection <b>November 15, 2006</b>	Is this a Multi-zone Facility? <b>yes</b>
Depth to Base of USDW, ft. <b>672</b>	Name of Lowermost USDW <b>Glaical Drift</b>	Hour of Last Injection <b>12:00</b>	Other Zones Used at Facility <b>Reed City Dolomite</b>
Depth to Top of Permitted IZ, ft <b>5765</b>	Name of Injection Zone <b>Salina</b>	Volume Injected in Past Year, gal	Name of Shallower Injection Zone <b>Reed City Dolomite</b>
Plugged Back Depth, ft. <b>7950</b>	Total Depth, ft <b>7950</b>	Does Injectate Temperature vary? <b>Not much</b>	Depth to Shallower Injection Zone, ft <b>4000</b>

## **Calibration Information**

Low Gauge Temp, deg F <b>35.1</b>	High Gauge Temperature, deg. F <b>108.4</b>
Low Thermometer Temp, deg. F <b>34.1</b>	High Thermometer Temp, deg. F <b>107.5</b>
Were Log Readings Adjusted? <b>No</b>	Overall Appearance Good? <b>Yes</b>

## **Logging Information**

Time of start of Logging <b>06:40</b>	For Data Plot, Data Interval, ft <b>5</b>
Hours since injection <b>164</b>	Max Log Depth, ft. <b>6500</b>
Multiple Log Runs? <b>2</b>	Maximum Logging Speed, ft/min <b>30</b>

## **Observations**

Depth to Liquid Level, ft <b>380</b>	Top of Receptive Strata, ft. <b>N/A</b>	Depth of Most Extreme temp above <b>5785</b>	Depth of Most Extreme temp in IZ, ft <b>6490</b>
Temperature at Total Depth, deg F <b>137.13</b>	Bottom of Receptive Strata, ft. <b>N/A</b>	Most Extreme Temp above IZ, deg F <b>133.12</b>	Most Extreme Temp in IZ, deg F <b>137.13</b>
Top of Receptive Strata to top of IZ, ft <b>NA</b>	Thickness of Receptive Interval, ft <b>NA</b>		

## **Analysis**

Is a Log Available for Comparison? <b>Yes</b>	Are traces Essentially Congruent? <b>Yes</b>	Depths of Intervals with Constant Temp over more than 50 ft. present?	
What Well Log Used? <b>2042</b>	Is there a Pivot Point <b>No</b>	Top of Interval #1, ft	Top of Interval #2, ft
What Year? <b>2006</b>	If yes, What depth? ft <b>3325</b>	Bottom of Interval #1, ft	Bottom of Interval #2, ft
	If Yes, What Temp? deg F <b>117.73</b>	Is Constant Temp More or Less than Temp Above?	
		Does this Suggest Flow?	Does this Suggest Flow?

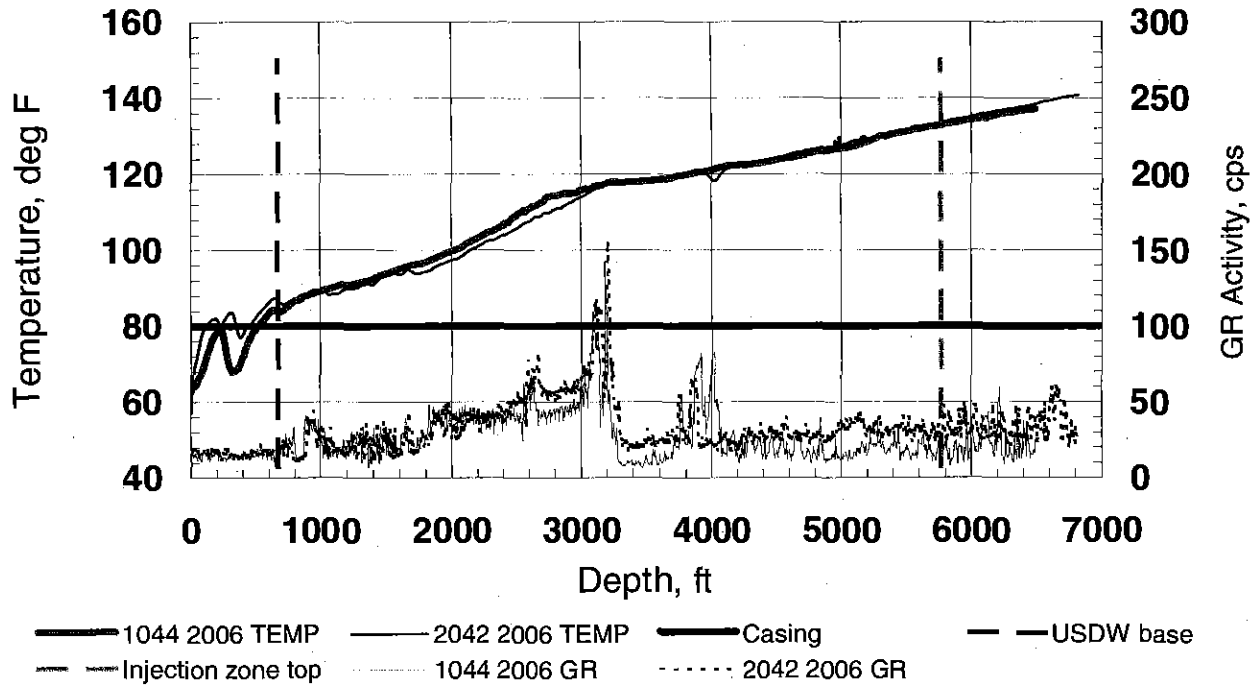
## **Comments**

The log appears clean and does not show any indication of upward movement of fluid.

## **Does the Well Have External Mechanical Integrity?**

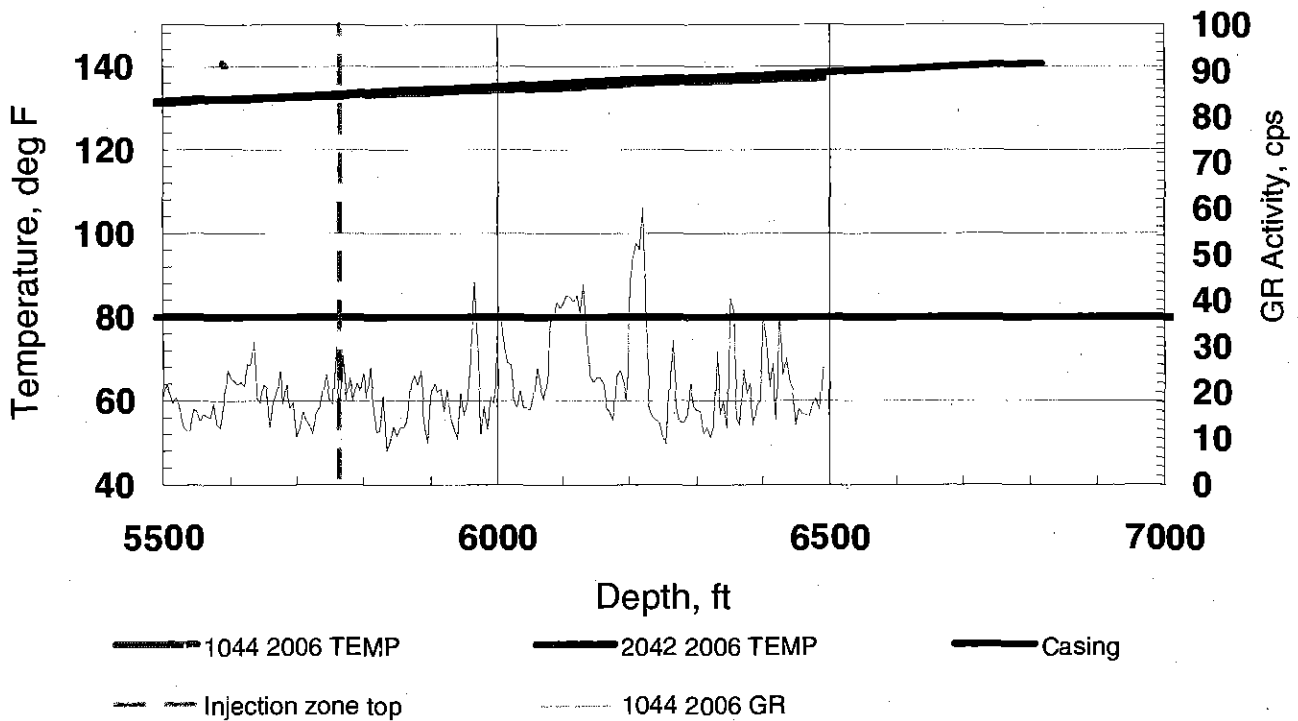
**YES**

# Mosaic Potash, LLC 1044



The dip in the temperature log, at 4000 ft, for well 2042 is likely due to offset injection at the Woodward Injection well.

## DETAIL OF INJECTION AND CONFINING ZONES



## REVIEW OF TEMPERATURE LOGS FOR PART (2) OF MI

Facility Name <b>Hersey</b>		Operator <b>Mosaic Potash Hersey</b>	
Well Name <b>#1051</b>	Test ID Number <b>2007-007</b>	USEPA Permit Number <b>MI-133-3G-A002</b>	Analyst <b>Steve Roy</b>
County <b>Osceola</b>	State <b>Michigan</b>	Test Date <b>January 25, 2007</b>	Analysis Date <b>March 6, 2007</b>

### Well and Operational Information

Long String Casing Length, ft <b>7734</b>	Tubing Depth, ft <b>7800</b>	Date of Last Injection <b>January 18, 2007</b>	Is this a Multi-zone Facility? <b>yes</b>
Depth to Base of USDW, ft. <b>820</b>	Name of Lowermost USDW <b>Glacial Drift</b>	Hour of Last Injection	Other Zones Used at Facility <b>Reed City Dolomite</b>
Depth to Top of Permitted IZ, ft <b>5765</b>	Name of Injection Zone <b>Salina</b>	Volume Injected in Past Year, gal	Name of Shallower Injection Zone <b>Reed City Dolomite</b>
Plugged Back Depth, ft. <b>7892</b>	Total Depth, ft <b>7892</b>	Does Injectate Temperature vary? <b>unknown</b>	Depth to Shallower Injection Zone, ft

### Calibration Information

Low Gauge Temp, deg F <b>59.4</b>	High Gauge Temperature, deg. F <b>102.2</b>
Low Thermometer Temp, deg. F <b>57.9</b>	High Thermometer Temp, deg. F <b>100.3</b>
Were Log Readings Adjusted? <b>unknown</b>	Overall Appearance Good? <b>Similar to other Mosaic logs</b>

### Logging Information

Time of start of Logging	For Data Plot, Data Interval, ft <b>5</b>
Days since last injection <b>7</b>	Max Log Depth, ft. <b>6445</b>
Multiple Log Runs? <b>no</b>	Maximum Logging Speed, ft/min <b>30</b>

### Observations

Depth to Liquid Level, ft <b>0</b>	Top of Receptive Strata, ft. <b>not run deep enough</b>	Depth of Most Extreme temp above IZ, ft <b>5765</b>	Depth of Most Extreme temp in IZ, ft <b>not run deep enough</b>
Temperature at Total Depth, deg F <b>139.10</b>	Bottom of Receptive Strata, ft. <b>not run deep enough</b>	Most Extreme Temp above IZ, deg F <b>135.77</b>	Most Extreme Temp in IZ, deg F <b>N/A</b>
Top of Receptive Strata to top of IZ, ft <b>N/A</b>	Thickness of Receptive Interval, ft <b>N/A</b>		

### Analysis

Is a Log Available for Comparison? <b>Yes</b>	Are traces Essentially Congruent? <b>No</b>	Depths of Intervals with Constant Temp over more than 50 ft. present? <b>No</b> <b>NA</b>	
What Well Log Used? <b>1054</b>	Is there a Pivot Point <b>no</b>	Top of Interval #1, ft <b>NA</b>	Top of Interval #2, ft <b>NA</b>
What Year? <b>2006</b>	If yes, What depth? ft <b>NA</b>	Bottom of Interval #1, ft <b>NA</b>	Bottom of Interval #2, ft <b>NA</b>
	If Yes, What Temp? deg F <b>0.00</b>	Is Constant Temp More or Less than Temp Above? <b>NA</b>	<b>NA</b>
		Does this Suggest Flow? <b>NA</b>	Does this Suggest Flow? <b>NA</b>

### Comments

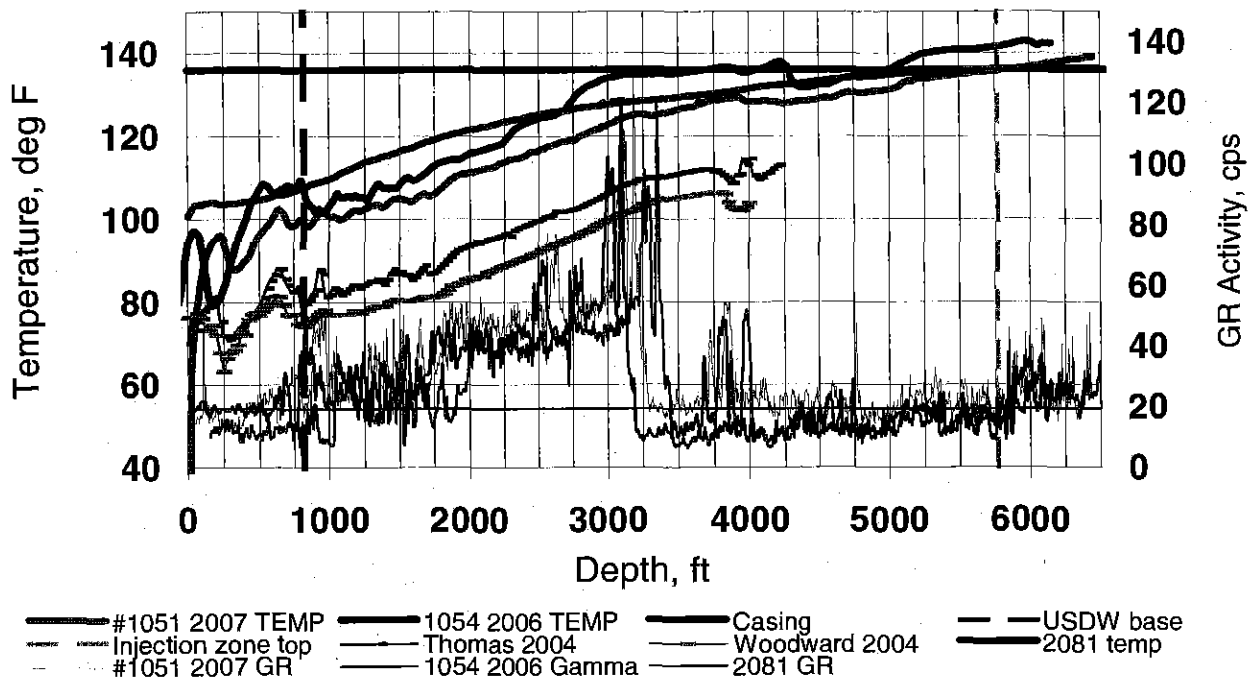
Appearance below 1000 ft is similar to other Mosaic Class III logs though otherwise unusual. Similarly the irregularity in the trace is similar to other Mosaic Class III logs. 1051 is a producing well.

### Does the Well Have External Mechanical Integrity?

**YES**

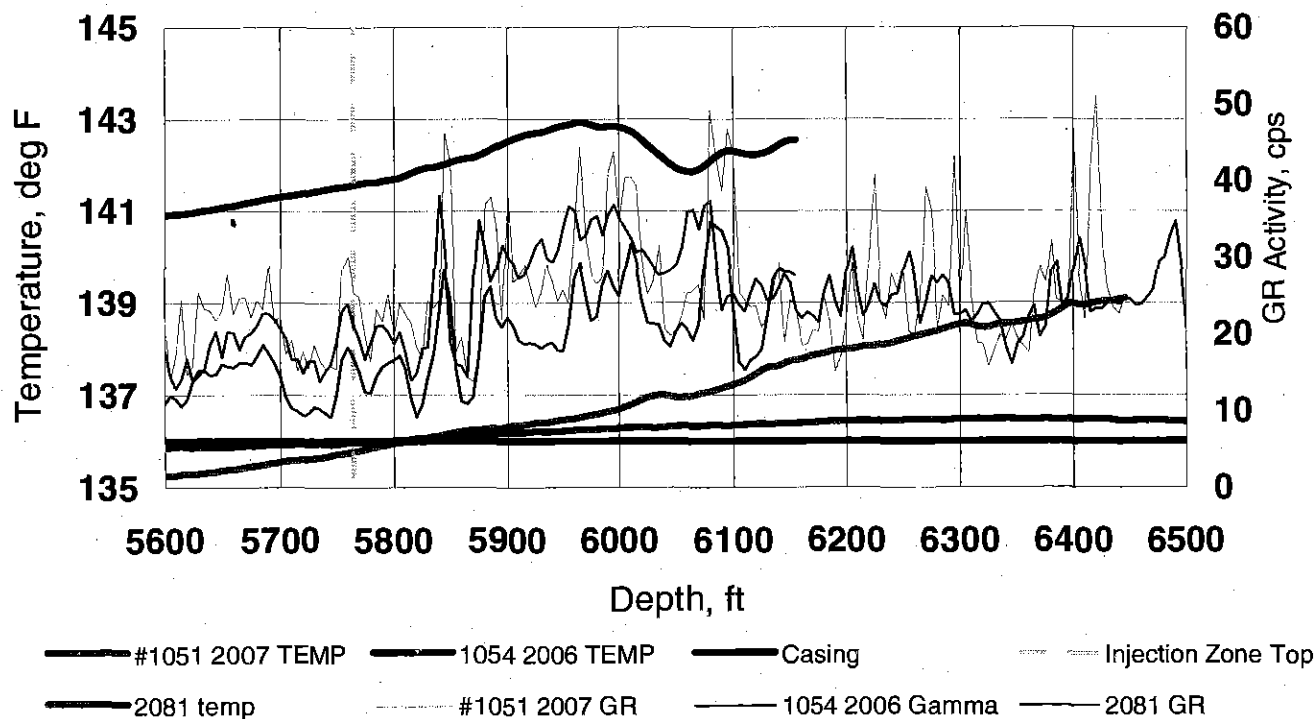


### Mosaic Potash Hersey #1051



Temp logs for both 1051 and 1054 show the wide temperature variations below 1000 ft seen in other Mosaic logs. 1051 and 2081 are producing wells, 1054 is injecting.

### DETAIL OF INJECTION AND CONFINING ZONES



Depths for 1051 have been adjusted by 120 ft to get better agreement at these depths.  
Depths for 2081 have been adjusted by 120 ft to get better agreement at these depths.

## REVIEW OF TEMPERATURE LOGS FOR PART (2) OF MI

Facility Name Hersey		Operator Mosaic Potash Hersey	
Well Name #1051		USEPA Permit Number MI-133-3G-A002	Analyst Steve Roy
County Osceola	State Michigan	Test Date January 25, 2007	Analysis Date March 6, 2007

### COMMENTS

The 1000 series Class III wells are near the Thomas #1-26. The cooling between 3230 and about 3400 ft is unexplained as is the cooling between 3900 and about 4700 ft. 1051 is a producing well and 1054 is an injection well.

## REVIEW OF TEMPERATURE LOGS FOR PART (2) OF MI

Facility Name <b>Hersey</b>		Operator <b>Mosaic Potash Hersey</b>	
Well Name <b>#1054</b>	Test ID Number <b>2007-008</b>	USEPA Permit Number <b>MI-133-3G-A002</b>	Analyst <b>Steve Roy</b>
County <b>Osceola</b>	State <b>Michigan</b>	Test Date <b>January 25, 2007</b>	Analysis Date <b>March 9, 2007</b>

### Well and Operational Information

Long String Casing Length, ft <b>7845</b>	Tubing Depth, ft <b>0</b>	Date of Last Injection <b>January 17, 2007</b>	Is this a Multi-zone Facility? <b>Yes</b>
Depth to Base of USDW, ft. <b>721</b>	Name of Lowermost USDW <b>Glacial Drift</b>	Hour of Last Injection	Other Zones Used at Facility <b>Reed City Dolomite</b>
Depth to Top of Permitted IZ, ft <b>5765</b>	Name of Injection Zone <b>Salina</b>	Volume Injected in Past Year, gal <b>unknown</b>	Name of Shallower Injection Zone <b>Reed City Dolomite</b>
Plugged Back Depth, ft. <b>NA</b>	Total Depth, ft	Does Injectate Temperature vary? <b>unknown</b>	Depth to Shallower Injection Zone, ft <b>3984</b>

### Calibration Information

Low Gauge Temp, deg F <b>58.6</b>	High Gauge Temperature, deg. F <b>105.1</b>	Time of start of Logging	For Data Plot, Data Interval, ft <b>5</b>
Low Thermometer Temp, deg. F <b>57.3</b>	High Thermometer Temp, deg. F <b>103.9</b>	Days since last injection <b>8</b>	Max Log Depth, ft. <b>6245</b>
Were Log Readings Adjusted? <b>unknown</b>	Overall Appearance Good? <b>Similar to other Mosaic logs</b>	Multiple Log Runs? <b>No</b>	Maximum Logging Speed, ft/min <b>30</b>

### Logging Information

### Observations

Depth to Liquid Level, ft <b>surface</b>	Top of Receptive Strata, ft. <b>6150</b>	Depth of Most Extreme temp active above IZ, ft <b>6085</b>	Depth of Most Extreme temp in IZ, ft <b>not run deep enough</b>
Temperature at Total Depth, deg F <b>141.83</b>	Bottom of Receptive Strata, ft. <b>not run deep enough</b>	Most Extreme Temp above IZ, deg F <b>142.11</b>	Most Extreme Temp in IZ, deg F <b>N/A</b>
Top of Receptive Strata to top of IZ, ft <b>-385</b>	Thickness of Receptive Interval, ft <b>NA</b>		

### Analysis

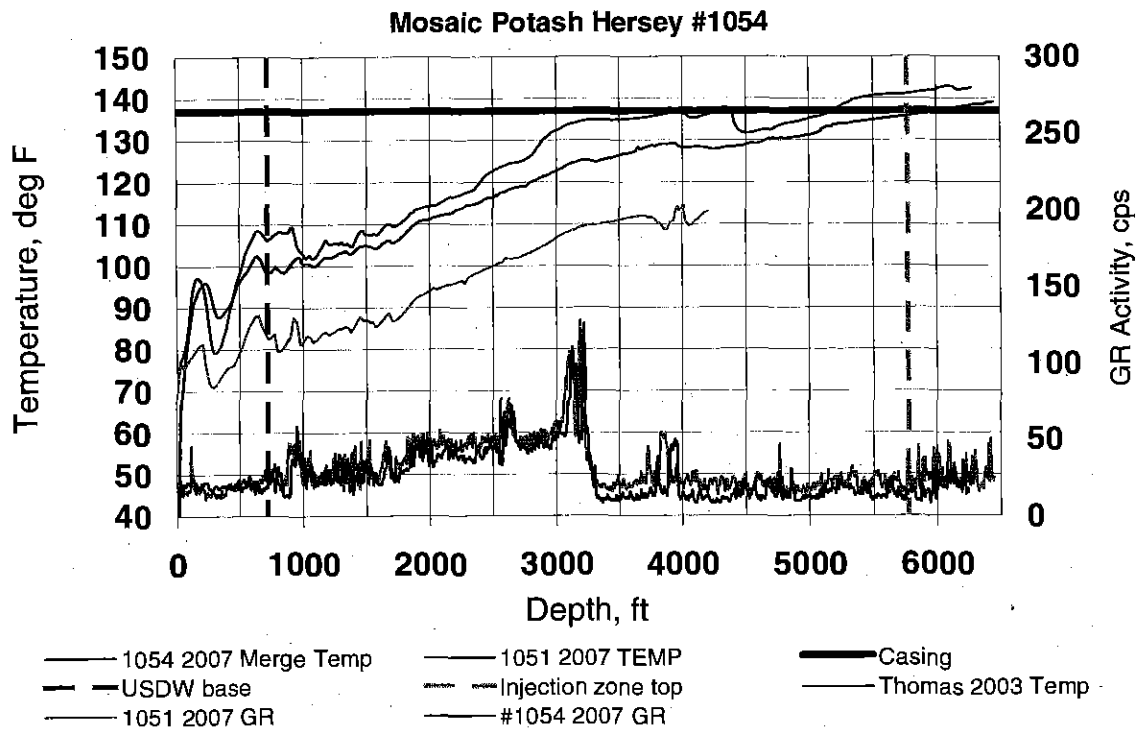
Is a Log Available for Comparison? <b>Yes</b>	Are traces Essentially Congruent? <b>no</b>	Depths of Intervals with Constant Temp over more than 50 ft. present? <b>no</b>	
What Well Log Used? <b>1051</b>	Is there a Pivot Point <b>no</b>	Top of Interval #1, ft <b>NA</b>	Top of Interval #2, ft <b>NA</b>
What Year? <b>2007</b>	If yes, What depth? ft <b>NA</b>	Bottom of Interval #1, ft <b>NA</b>	Bottom of Interval #2, ft <b>NA</b>
	If Yes, What Temp? deg F <b>NA</b>	Is Constant Temp More or Less than Temp Above? <b>NA</b>	<b>NA</b>
		Does this Suggest Flow? <b>NA</b>	Does this Suggest Flow? <b>NA</b>

### Comments

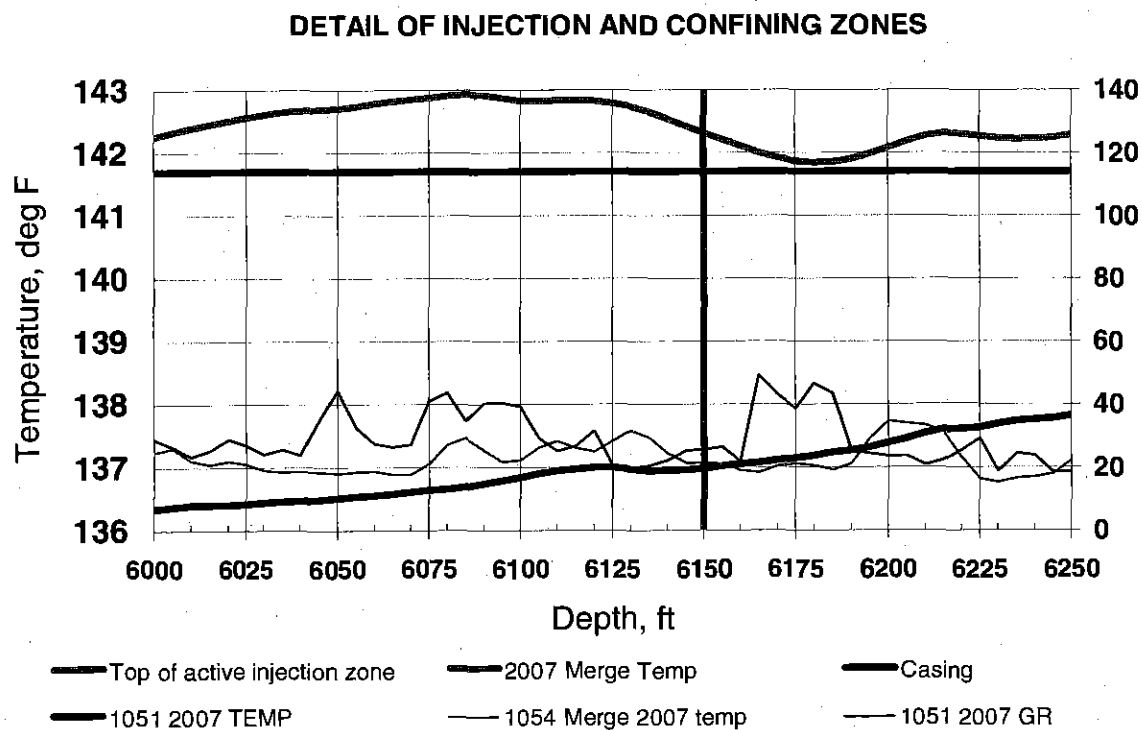
The 1054 log shows several features not seen in the 1051 log, such as the drop in temperature at approximately 4400 ft. There is no sign of fluid leaving the injection zone.

### Does the Well Have External Mechanical Integrity?

**YES**



The 1054 2007 Merge Temp was run after the #1054 2007 Temp because of anomalies in the first log. 1051 is the producing well, 1054 the injection well for this pair.



Although there is no distinct inflection point, the top of the active injection zone appears to be at approximately 6150 ft. To align the two gamma ray traces requires an increasing offset at deeper depths, probably because the wells diverge.

## REVIEW OF TEMPERATURE LOGS FOR PART (2) OF MI

Facility Name Hersey		Operator Mosaic Potash Hersey	
Well Name #1054		USEPA Permit Number MI-133-3G-A002	Analyst Steve Roy
County Osceola	State Michigan	Test Date January 25, 2007	Analysis Date March 9, 2007

### COMMENTS

Well #1054 is an injection well at this time, paired with #1051 as the producing well. A second log was run in this well because the Michigan Wireline operator wanted to verify the anomaly at 4225 ft that appeared in the initial log. The initial log was logged running into the well, while the second log was run coming uphole. There appears to be a pivot point between 2840 and 2930 ft: at shallower depths, the second run is cooler while at deeper depths it is slightly warmer. Temperature in the pivot zone is about 129 degrees. Comparison with #1051 shows that the producing well is cooler throughout the logged interval. (Both wells were shut-in for seven to eight days before the temperature logs were run.)

The strange "hump" seen between about 2750 ft and 4475 ft is not seen in other logs. The sudden 5.7 degree drop between 4340 and 4475 (from 137.2 to 131.5 degrees) is not seen in the cluster 2 well temperature logs nor in the currently available Cluster 1 logs. It is approximately 70 ft deeper than the bottom of the Thomas well at 4274 ft. The top of the Reed City dolomite in well #1054 is approximately 15 - 20 ft deeper than in the Thomas well (based on maps provided by Mosaic in 2005). It is not clear that this is the explanation. There is a slight increase in gamma ray activity below about 4500 ft but it seems unlikely that this represents a significant change in lithology, though this could be investigated.

The cooling seen between about 3950 ft and 4300 ft is also unexplained, though a similar feature is seen in #1051 and perhaps to a much smaller degree in #1041. It may be related to the lithologic change that occurs at approximately 3950 ft.

## REVIEW OF TEMPERATURE LOGS FOR PART (2) OF MI

Facility Name <b>Hersey Facility</b>		Operator <b>Mosaic Potash Hersey</b>	
Well Name <b>2031</b>	Test ID Number <b>2006-074</b>	USEPA Permit Number <b>MI-133-3G-A002</b>	Analyst <b>Steve Roy</b>
County <b>Osceola</b>	State <b>Michigan</b>	Test Date <b>November 2, 2006</b>	Analysis Date <b>December 20, 2006</b>

### Well and Operational Information

Long String Casing Length, ft <b>7870</b>	Tubing Depth, ft <b>5820</b>	Date of Last Injection <b>October 30, 2006</b>	Is this a Multi-zone Facility? <b>Yes</b>
Depth to Base of USDW, ft. <b>800</b>	Name of Lowermost USDW <b>Glacial Drift</b>	Hour of Last Injection <b>08:00</b>	Other Zones Used at Facility <b>Reed City Dolomite</b>
Depth to Top of Permitted IZ, ft <b>5765</b>	Name of Injection Zone <b>Salina Group</b>	Volume Injected in Past Year, gal	Name of Shallower Injection Zone <b>Reed City Dolomite</b>
Plugged Back Depth, ft. <b>7950</b>	Total Depth, ft <b>7950</b>	Does Injectate Temperature vary?	Depth to Shallower Injection Zone, ft <b>3920</b>

### Calibration Information

Low Gauge Temp, deg F <b>56.4</b>	High Gauge Temperature, deg. F <b>101.5</b>
Low Thermometer Temp, deg. F <b>57.4</b>	High Thermometer Temp, deg. F <b>102.2</b>
Were Log Readings Adjusted? <b>unknown</b>	Overall Appearance Good? <b>Yes</b>

### Logging Information

Time of start of Logging <b>08:16</b>	For Data Plot, Data Interval, ft <b>5</b>
Hours since injection <b>73</b>	Max Log Depth, ft. <b>6520</b>
Multiple Log Runs? <b>no</b>	Maximum Logging Speed, ft/min <b>31</b>

### Observations

Depth to Liquid Level, ft <b>25</b>	Top of Receptive Strata, ft. <b>6470</b>	Depth of Most Extreme temp above <b>6440</b>	Depth of Most Extreme temp in IZ, ft <b>6475</b>
Temperature at Total Depth, deg F <b>135.50</b>	Bottom of Receptive Strata, ft. <b>6500</b>	Most Extreme Temp above IZ, deg F <b>135.10</b>	Most Extreme Temp in IZ, deg F <b>129.76</b>
Top of Receptive Strata to top of IZ, ft <b>705</b>	Thickness of Receptive Interval, ft <b>30</b>		

### Analysis

Is a Log Available for Comparison? <b>Yes</b>	Are traces Essentially Congruent? <b>essentially</b>	Depths of Intervals with Constant Temp over more than 50 ft. present? <b>Yes</b>	
What Well Log Used? <b>2031</b>	Is there a Pivot Point <b>no</b>	Top of Interval #1, ft <b>1490</b>	Top of Interval #2, ft <b>4450</b>
What Year? <b>1996</b>	If yes, What depth? ft <b>NA</b>	Bottom of Interval #1, ft <b>1560</b>	Bottom of Interval #2, ft <b>4525</b>
	If Yes, What Temp? deg F <b>NA</b>	Is Constant Temp More or Less than Temp Above? <b>more</b>	<b>more</b>
		Does this Suggest Flow? <b>no</b>	Does this Suggest Flow? <b>no</b>

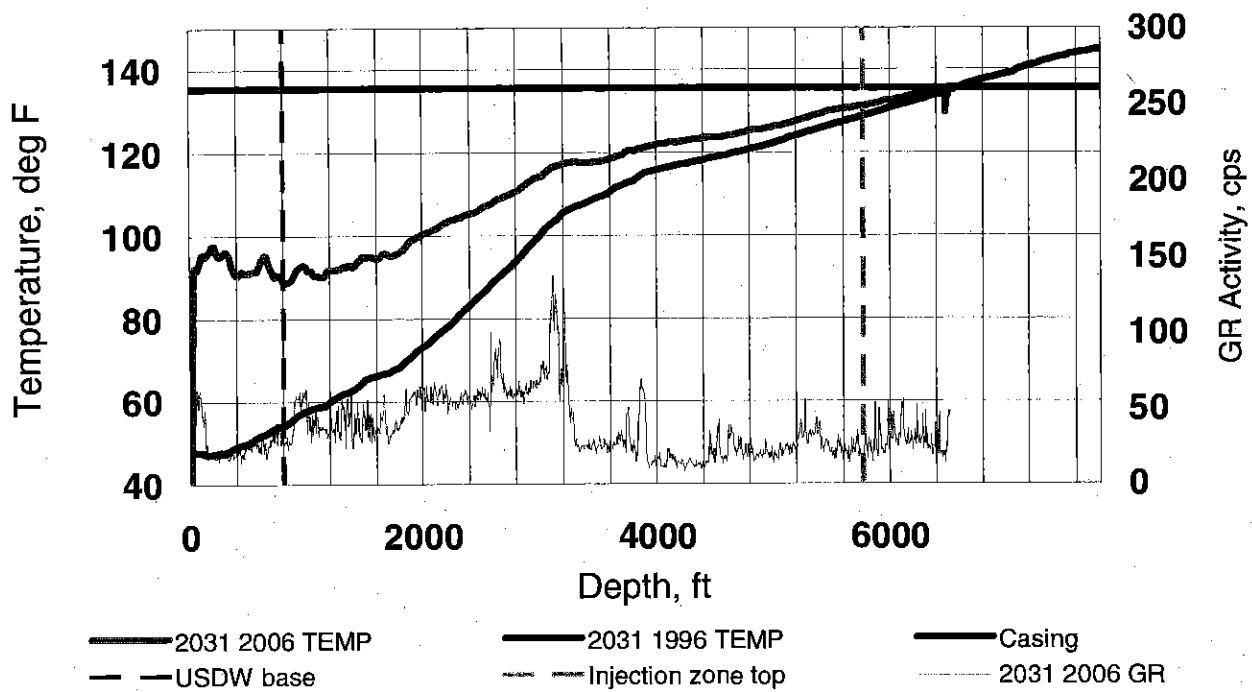
### Comments

Temperature trace has more than the usual amount of character, particularly below 1800 ft. For purposes of comparison with the earlier log and establishing external mechanical integrity, this log and the 1996 log are essentially congruent.

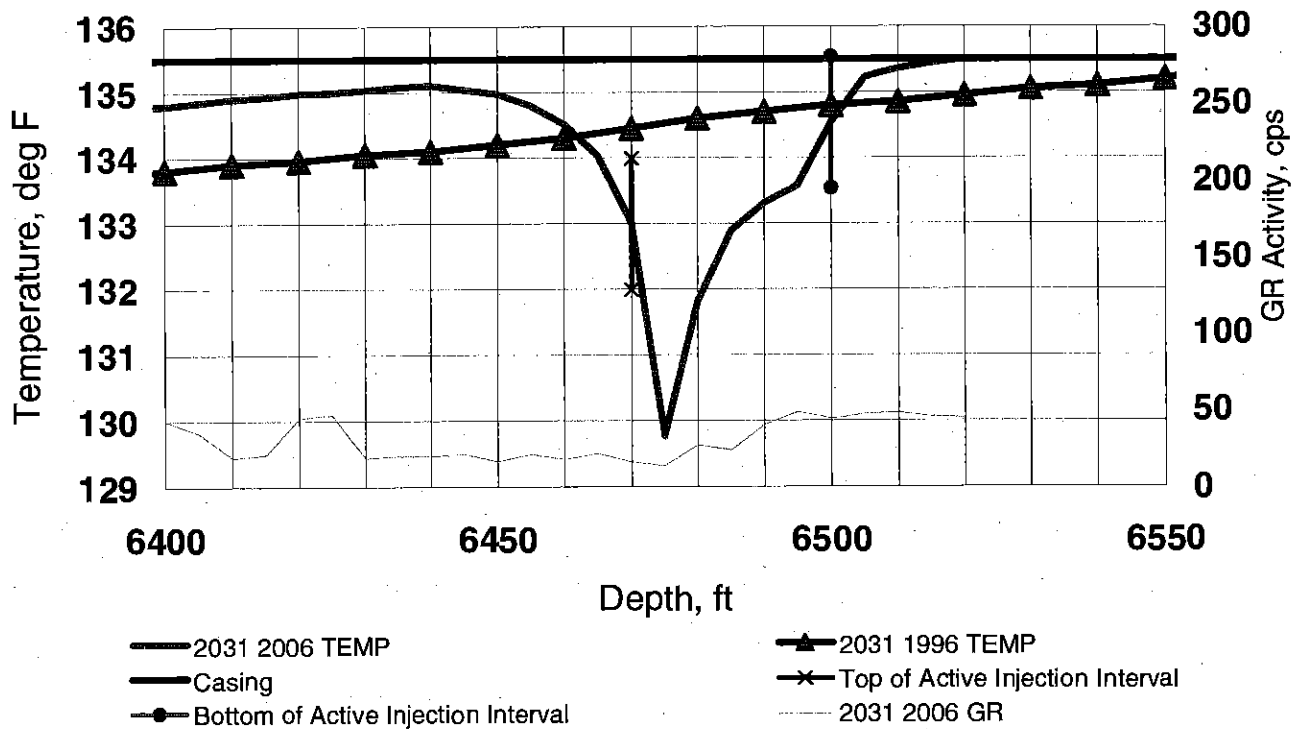
### Does the Well Have External Mechanical Integrity?

**YES**

### Mosaic Potash Hersey 2031



### DETAIL OF INJECTION AND CONFINING ZONES



## REVIEW OF TEMPERATURE LOGS FOR PART (2) OF MI

Facility Name <b>Mosaic Potash, LLC</b>		Operator <b>Mosaic Potash, LLC</b>	
Well Name <b>2032</b>	Test ID Number <b>2006-073</b>	USEPA Permit Number <b>MI-133-3G-A002</b>	Analyst <b>William Bates</b>
County <b>Osceola</b>	State <b>Michigan</b>	Test Date <b>October 18, 2006</b>	Analysis Date <b>January 11, 2007</b>

### Well and Operational Information

Long String Casing Length, ft <b>7755</b>	Tubing Depth, ft <b>5874</b>	Date of Last Injection <b>November 13, 2005</b>	Is this a Multi-zone Facility? <b>Yes</b>
Depth to Base of USDW, ft <b>804</b>	Name of Lowermost USDW <b>Glaical Drift</b>	Hour of Last Injection	Other Zones Used at Facility <b>Reed City Dolomite</b>
Depth to Top of Permitted IZ, ft <b>5765</b>	Name of Injection Zone <b>Salina</b>	Volume Injected in Past Year, gal	Name of Shallower Injection Zone <b>Reed City Dolomite</b>
Plugged Back Depth, ft <b>7810</b>	Total Depth, ft <b>7810</b>	Does Injectate Temperature vary? <b>Not much</b>	Depth to Shallower Injection Zone, ft <b>4000</b>

### Calibration Information

Low Gauge Temp, deg F <b>55.7</b>	High Gauge Temperature, deg. F <b>77.6</b>
Low Thermometer Temp, deg. F <b>56.6</b>	High Thermometer Temp, deg. F <b>76.6</b>
Were Log Readings Adjusted? <b>No</b>	Overall Appearance Good? <b>Yes</b>

### Logging Information

Time of start of Logging	For Data Plot, Data Interval, ft <b>5</b>
Days since last injection <b>339</b>	Max Log Depth, ft. <b>6775</b>
Multiple Log Runs? <b>Yes</b>	Maximum Logging Speed, ft/min <b>27.4</b>

### Observations

Depth to Liquid Level, ft	Top of Receptive Strata, ft. <b>N/A</b>	Depth of Most Extreme temp above <b>N/A</b>	Depth of Most Extreme temp in IZ, ft <b>N/A</b>
Temperature at Total Depth, deg F <b>140.87</b>	Bottom of Receptive Strata, ft. <b>N/A</b>	Most Extreme Temp above IZ, deg F <b>N/A</b>	Most Extreme Temp in IZ, deg F <b>N/A</b>
Top of Receptive Strata to top of IZ, ft <b>N/A</b>	Thickness of Receptive Interval, ft <b>N/A</b>		

### Analysis

Is a Log Available for Comparison? <b>Yes</b>	Are traces Essentially Congruent? <b>Yes</b>	Depths of Intervals with Constant Temp over more than 50 ft. present? <b>N/A</b>	
What Well Log Used? <b>2031</b>	Is there a Pivot Point <b>Yes</b>	Top of Interval #1, ft <b>N/A</b>	Top of Interval #2, ft <b>N/A</b>
What Year? <b>2006</b>	If yes, What depth? ft <b>1650</b>	Bottom of Interval #1, ft <b>N/A</b>	Bottom of Interval #2, ft <b>N/A</b>
	If Yes, What Temp? deg F <b>96.12</b>	Is Constant Temp More or Less than Temp Above? <b>N/A</b>	<b>N/A</b>
		Does this Suggest Flow? <b>N/A</b>	Does this Suggest Flow? <b>N/A</b>

### Comments

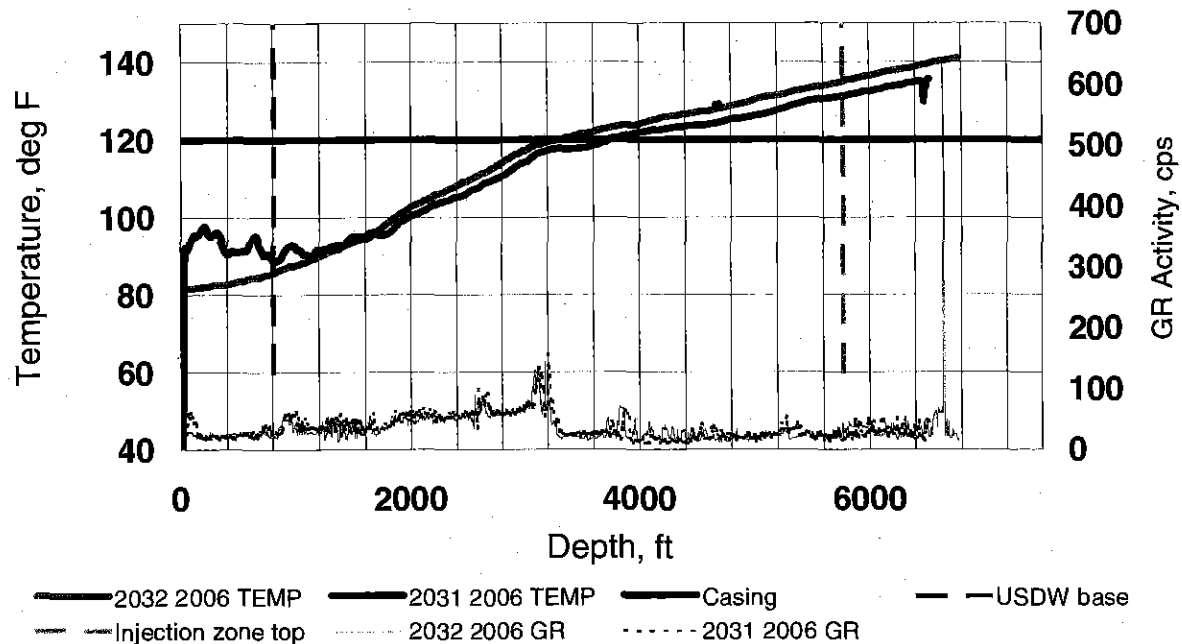
The log states that the temperature of the most recent injectate was 125 F.

### Does the Well Have External Mechanical Integrity?

**YES**

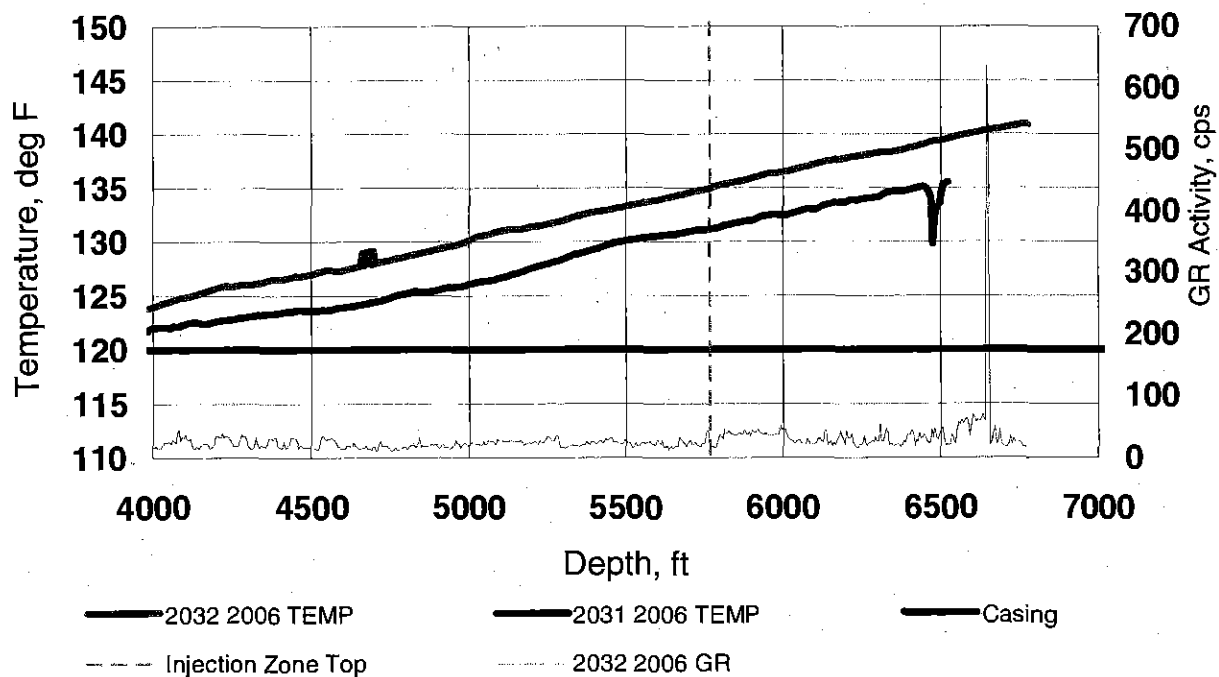


### Mosaic Potash, LLC 2032



At the time of the test the well was shut for almost one year. The first 3000 feet of the log appears very irregular. The log does not reach the active injection zone. There is an anomaly around 4685 feet which is explained in the report as an artifact of the tool. There also appears to be an anomaly in the gamma ray log around 6645 feet, which is not described in the report. This spike is labeled RA marker on the original log.

### DETAIL OF INJECTION AND CONFINING ZONES



## REVIEW OF TEMPERATURE LOGS FOR PART (2) OF MI

Facility Name Mosaic Potash, LLC		Operator Mosaic Potash, LLC	
Well Name 2032		USEPA Permit Number MI-133-3G-A002	Analyst William Bates
County Osceola	State Michigan	Test Date October 18, 2006	Analysis Date January 11, 2007

### COMMENTS

The most interesting aspect of this temperature log is the lack character. One explanation for this could be that prior to the test well2032 was in production mode. As the fluid is being produced, it would warm the strata above the injection zone. This would also explain the relatively high temperature of the injectate at the surface during the logging of the well. Although this might explain the featureless temperature log it is still odd that this effect would still be present 339 days after the well was shut in.

The active injection zone of this well was not able to be determined because the tool was not lowered to a sufficient depth to identify it.

## REVIEW OF TEMPERATURE LOGS FOR PART (2) OF MI

Facility Name <b>Hersey</b>		Operator <b>Mosaic Potash Hersey</b>	
Well Name <b>2041</b>	Test ID Number <b>2006-078</b>	USEPA Permit Number <b>MI-133-3G-A002</b>	Analyst <b>Steve Roy</b>
County <b>Osceola</b>	State <b>Michigan</b>	Test Date <b>October 31, 2006</b>	Analysis Date <b>December 21, 2006</b>

### Well and Operational Information

Depth to Top of Perfs, ft <b>7718</b>	Tubing Depth, ft <b>7402</b>	Date of Last Injection <b>October 11, 2006</b>	Is this a Multi-zone Facility? <b>yes</b>
Depth to Base of USDW, ft. <b>804</b>	Name of Lowermost USDW <b>Glacial Drift</b>	Hour of Last Injection	Other Zones Used at Facility <b>Reed City Dolomite</b>
Depth to Top of Permitted IZ, ft <b>5765</b>	Name of Injection Zone <b>Salina Group</b>	Volume Injected in Past Year, gal	Name of Shallower Injection Zone <b>Reed City Dolomite</b>
Plugged Back Depth, ft. <b>7896</b>	Total Depth, ft <b>7896</b>	Does Injectate Temperature vary?	Depth to Shallower Injection Zone, ft <b>3986</b>

### Calibration Information

Low Gauge Temp, deg F <b>46.5</b>	High Gauge Temperature, deg. F <b>107.1</b>
Low Thermometer Temp, deg. F <b>45.1</b>	High Thermometer Temp, deg. F <b>106</b>
Were Log Readings Adjusted? <b>unknown</b>	Overall Appearance Good? <b>yes</b>

### Logging Information

Time of start of Logging <b>10:12</b>	For Data Plot, Data Interval, ft <b>1</b>
Days since last injection <b>20</b>	Max Log Depth, ft. <b>1501</b>
Multiple Log Runs? <b>no</b>	Maximum Logging Speed, ft/min <b>51</b>

### Observations

Depth to Liquid Level, ft	Top of Receptive Strata, ft. <b>indeterminate</b>	Depth of Most Extreme temp above <b>6829</b>	Depth of Most Extreme temp in IZ, ft <b>indeterminate</b>
Temperature at Total Depth, deg F <b>94.77</b>	Bottom of Receptive Strata, ft. <b>indeterminate</b>	Most Extreme Temp above IZ, deg F <b>94.77</b>	Most Extreme Temp in IZ, deg F <b>N/A</b>
Top of Receptive Strata to top of IZ, ft <b>NA</b>	Thickness of Receptive Interval, ft		

### Analysis

Is a Log Available for Comparison? <b>Yes</b>	Are traces Essentially Congruent? <b>yes</b>	Depths of Intervals with Constant Temp over more than 50 ft. present?	
What Well Log Used? <b>1044</b>	Is there a Pivot Point <b>yes</b>	Top of Interval #1, ft	Top of Interval #2, ft
What Year? <b>2006</b>	If yes, What depth? ft <b>3700</b>	Bottom of Interval #1, ft	Bottom of Interval #2, ft
	If Yes, What Temp? deg F <b>97.42</b>	Is Constant Temp More or Less than Temp Above?	
		Does this Suggest Flow?	Does this Suggest Flow?

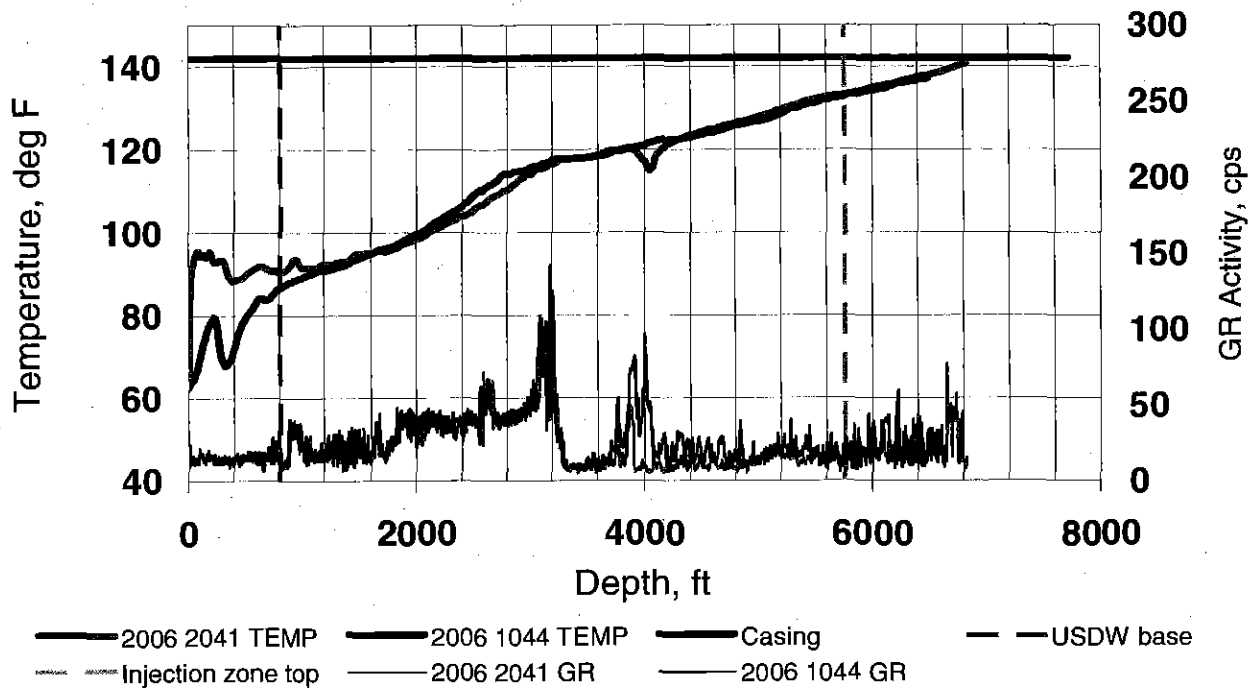
### Comments

Pivot point exists but is not meaningful due to separation of wells and the near parallelism of traces in the zone of interest.

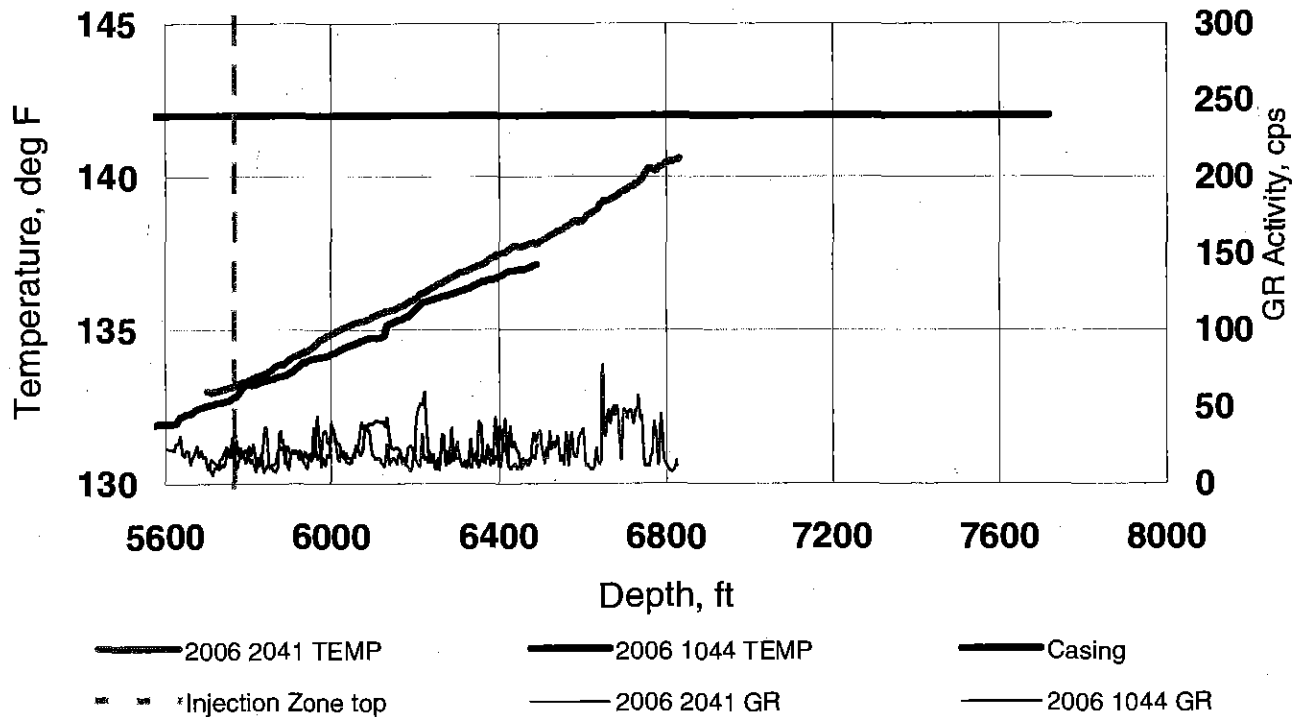
### Does the Well Have External Mechanical Integrity?

**YES**

### Mosaic Potash Hersey 2041



### DETAIL OF INJECTION AND CONFINING ZONES



## REVIEW OF TEMPERATURE LOGS FOR PART (2) OF MI

Facility Name Hersey		Operator Mosaic Potash Hersey	
Well Name 2041		USEPA Permit Number MI-133-3G-A002	Analyst Steve Roy
County Osceola	State Michigan	Test Date October 31, 2006	Analysis Date December 21, 2006

### COMMENTS

Injection zone for the two Class I wells at this site is the Reed City Dolomite. The top of the injection zone is 3984 - 4150 in the Woodward, 3917 - 4085 in the Thomas. This aligns reasonably well with the cool anomaly in this temperature log. The log from well #1044 is far from well #2041, which may explain some of the differences in the details of the curves.

## REVIEW OF TEMPERATURE LOGS FOR PART (2) OF MI

Facility Name <b>Hersey Facility</b>		Operator <b>Mosaic Potash Hersey, LLC</b>	
Well Name <b>#2042</b>	Test ID Number <b>2006-075</b>	USEPA Permit Number <b>MI-133-3G-A002</b>	Analyst <b>Gerrish</b>
County <b>Osceola</b>	State <b>Michigan</b>	Test Date <b>November 8, 2006</b>	Analysis Date <b>December 11, 2006</b>

### Well and Operational Information

Long String Casing Length, ft <b>7797</b>	Tubing Depth, ft <b>7400</b>	Date of Last Injection <b>October 11, 2006</b>	Is this a Multi-zone Facility? <b>Yes</b>
Depth to Base of USDW, ft. <b>554</b>	Name of Lowermost USDW <b>Glacial Drift</b>	Hour of Last Injection	Other Zones Used at Facility <b>Reed City Dolomite</b>
Depth to Top of Permitted IZ, ft <b>5765</b>	Name of Injection Zone <b>Salina Group</b>	Volume Injected in Past Year, gal	Name of Shallower Injection Zone <b>Reed City Dolomite</b>
Plugged Back Depth, ft. <b>7906</b>	Total Depth, ft <b>7906</b>	Does Injectate Temperature vary? <b>Not much</b>	Depth to Shallower Injection Zone, ft <b>3920</b>

### Calibration Information

### Logging Information

Low Gauge Temp, deg F <b>75.3</b>	High Gauge Temperature, deg. F <b>107.2</b>	Time of start of Logging <b>06:13</b>	For Data Plot, Data Interval, ft <b>5</b>
Low Thermometer Temp, deg. F <b>73.8</b>	High Thermometer Temp, deg. F <b>105.6</b>	Days since last injection <b>28</b>	Max Log Depth, ft. <b>6817</b>
Were Log Readings Adjusted? <b>No</b>	Overall Appearance Good? <b>Yes</b>	Multiple Log Runs? <b>No</b>	Maximum Logging Speed, ft/min

### Observations

Depth to Liquid Level, ft <b>N/A</b>	Top of Receptive Strata, ft. <b>N/A</b>	Depth of Most Extreme temp above <b>6817</b>	Depth of Most Extreme temp in IZ, ft <b>N/A</b>
Temperature at Total Depth, deg F <b>140.74</b>	Bottom of Receptive Strata, ft. <b>N/A</b>	Most Extreme Temp above IZ, deg F <b>140.74</b>	Most Extreme Temp in IZ, deg F <b>N/A</b>
Top of Receptive Strata to top of IZ, ft	Thickness of Receptive Interval, ft		

### Analysis

Is a Log Available for Comparison? <b>Yes</b>	Are traces Essentially Congruent? <b>Yes</b>	Depths of Intervals with Constant Temp over more than 50 ft. present? <b>N/A</b>	
What Well Log Used? <b>#2042</b>	Is there a Pivot Point <b>No</b>	Top of Interval #1, ft <b>N/A</b>	Top of Interval #2, ft <b>N/A</b>
What Year? <b>2001</b>	If yes, What depth? ft	Bottom of Interval #1, ft <b>N/A</b>	Bottom of Interval #2, ft <b>N/A</b>
	If Yes, What Temp? deg F	Is Constant Temp More or Less than Temp Above? <b>N/A</b>	<b>N/A</b>
		Does this Suggest Flow? <b>N/A</b>	Does this Suggest Flow? <b>N/A</b>

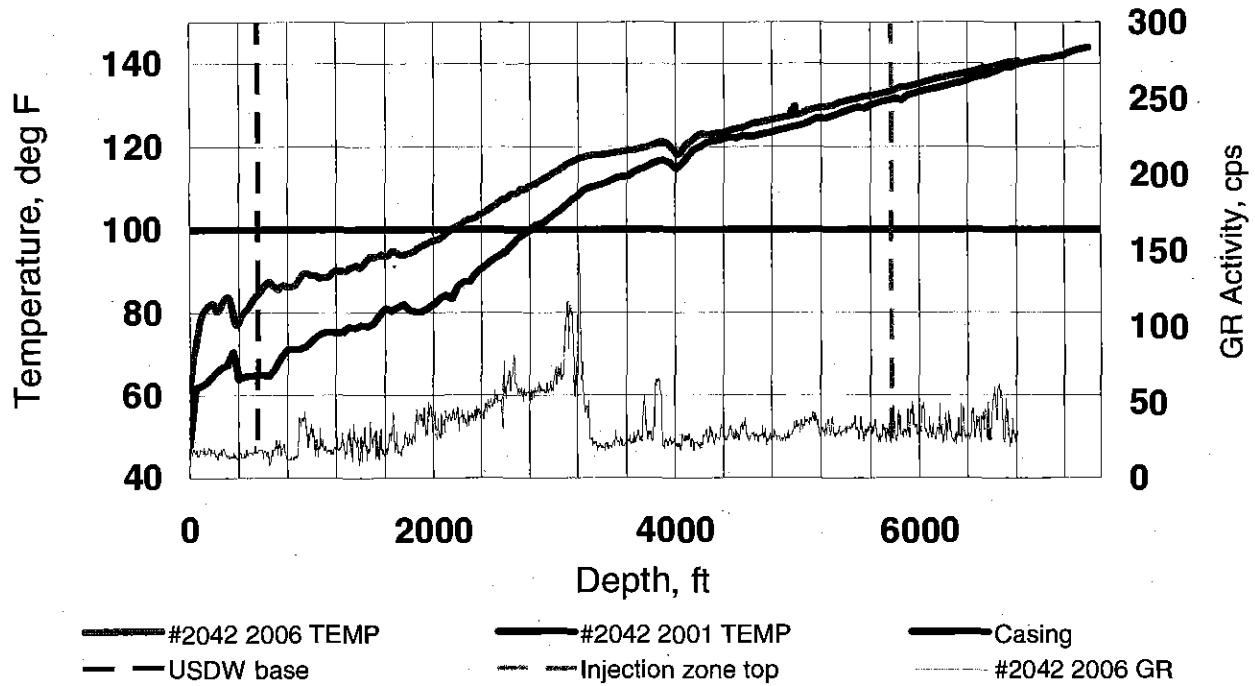
Comments

Log looks good.

**Does the Well Have External Mechanical Integrity?**

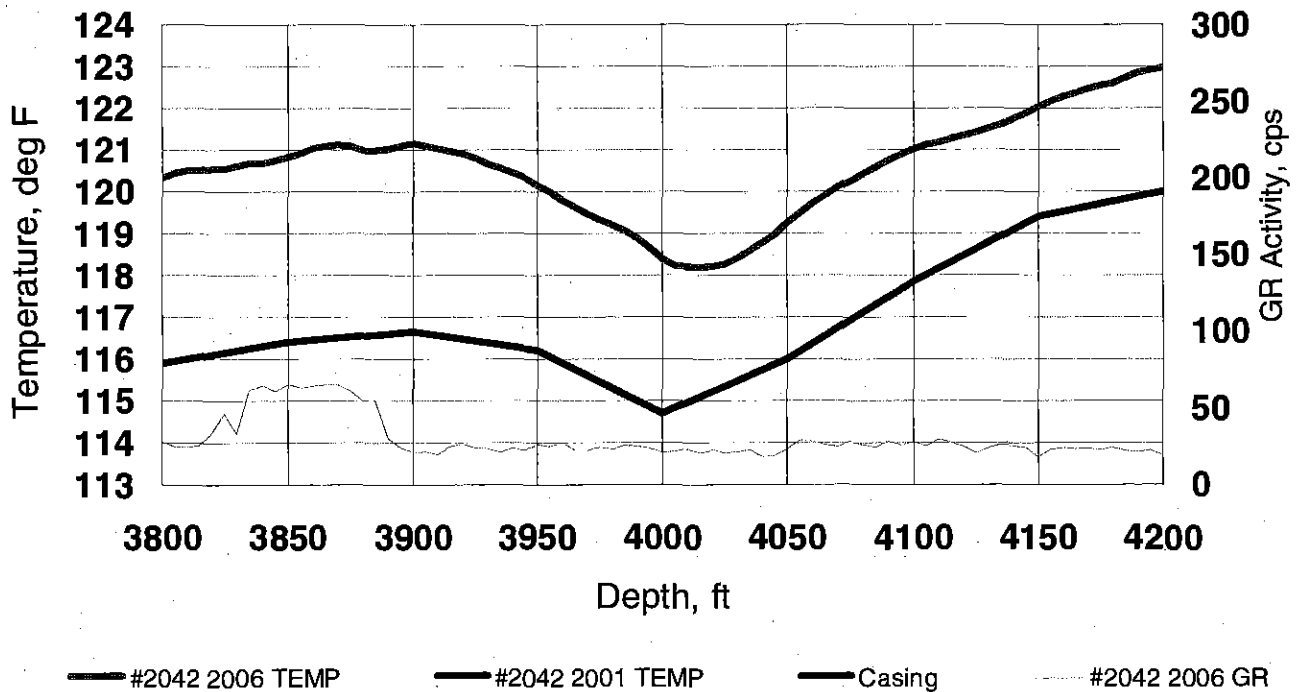
**YES**

### Mosaic Potash Hersey, LLC #2042



Comparison of the current and previous logs showing convergence near the injection zone. The injectate temperature is very warm, still over 150 degrees F at the deepest logged depth.

### DETAIL OF INJECTION AND CONFINING ZONES



This is the Reed City Dolomite into which the two Class I wells inject. It is the only interesting feature.

## REVIEW OF TEMPERATURE LOGS FOR PART (2) OF MI

Facility Name Hersey Facility		Operator Mosaic Potash Hersey, LLC	
Well Name #2042		USEPA Permit Number MI-133-3G-A002	Analyst Gerrish
County Osceola	State Michigan	Test Date November 8, 2006	Analysis Date December 11, 2006

### COMMENTS

The logs indicate injection of a very warm liquid which leaves the well bore beneath the deepest logged depth. The rock around the well bore has warmed as a result of heat loss from the injectate. A few areas near the surface may reflect the effects of some flow within the shallow aquifers. There is little heating resulting from loss of heat from the surface facility indicated. Essentially, the log indicates a rather predictable progress of heating.



## REVIEW OF TEMPERATURE LOGS FOR PART (2) OF MI

Facility Name <b>IMC Hersey</b>		Operator <b>Mosaic</b>	
Well Name <b>2061</b>	Test ID Number <b>2006-076</b>	USEPA Permit Number <b>MI-133-3G-A002</b>	Analyst <b>Patterson</b>
County <b>Osceola</b>	State <b>Michigan</b>	Test Date <b>November 9, 2006</b>	Analysis Date <b>November 27, 2006</b>

### Well and Operational Information

Long String Casing Length, ft <b>7800</b>	Tubing Depth, ft <b>0</b>	Date of Last Injection <b>May 24, 2004</b>	Is this a Multi-zone Facility? <b>NO</b>
Depth to Base of USDW, ft. <b>800</b>	Name of USDW <b>Glacial Drift</b>	Hour of Last Injection	Other Zones Used at Facility <b>N/A</b>
Depth to Top of Permitted IZ, ft <b>5675</b>	Name of Injection Zone <b>Salina</b>	Volume Injected in Past Year, gal <b>unknown</b>	Name of Shallower Injection Zone <b>N/A</b>
Plugged Back Depth, ft. <b>7910</b>	Total Depth, ft <b>8066</b>	Does Injectate Temperature vary? <b>no</b>	Depth to Shallower Injection Zone, ft <b>N/A</b>

### Calibration Information

Low Gauge Temp, deg F <b>72.5</b>	High Gauge Temperature, deg. F <b>98.6</b>
Low Thermometer Temp, deg. F <b>71.3</b>	High Thermometer Temp, deg. F <b>97.4</b>
Were Log Readings Adjusted? <b>NO</b>	Overall Appearance Good? <b>NO</b>

### Logging Information

Time of start of Logging <b>06:30</b>	For Data Plot, Data Interval, ft <b>0.5</b>
Days since last injection <b>899</b>	Max Log Depth, ft. <b>6820.00</b>
Multiple Log Runs? <b>YES</b>	Maximum Logging Speed, ft/min <b>27</b>

### Observations

Depth to Liquid Level, ft <b>Surface</b>	Depth to top of Active Injection, ft <b>N/A</b>	Active IZ - top permitted IZ, ft <b>N/A</b>	Temperature at Total Depth, deg F <b>140.57</b>
Base Affected by Surface Effects, ft <b>350</b>	Shallow Bedrock Temperature, deg F <b>77.76</b>	Depth of Most Extreme temp above <b>N/A</b>	Most Extreme Temp above IZ, deg F <b>#N/A</b>
Top of conductivity effect above IZ, ft <b>6818</b>	Deep Temp. Unaffected by Injection <b>140.57</b>	Depth of Most Extreme temp in IZ, ft <b>6818</b>	Most Extreme Temp in IZ, deg F <b>140.57</b>
Calculated Temp at Surface, deg F <b>74.36</b>	Average Gradient, F/100 ft <b>0.97</b>		

### Analysis

Is a Log Available for Comparison? <b>Yes</b>	Are traces Essentially Congruent? <b>Yes</b>	Depths of Intervals with Constant Temp over more than 50 ft. present? <b>Yes</b>	
What Well Log Used? <b>1061</b>	Is there a Pivot Point <b>NO</b>	Top of Interval #1, ft <b>3375</b>	Top of Interval #2, ft
What Year? <b>2002</b>	If yes, What depth? ft <b>N/A</b>	Bottom of Interval #1, ft <b>3425</b>	Bottom of Interval #2, ft
	If Yes, What Temp? deg F <b>#N/A</b>	Is Constant Temp More or Less than Temp Above? <b>Less</b>	
		Does this Suggest Flow? <b>NO</b>	Does this Suggest Flow?

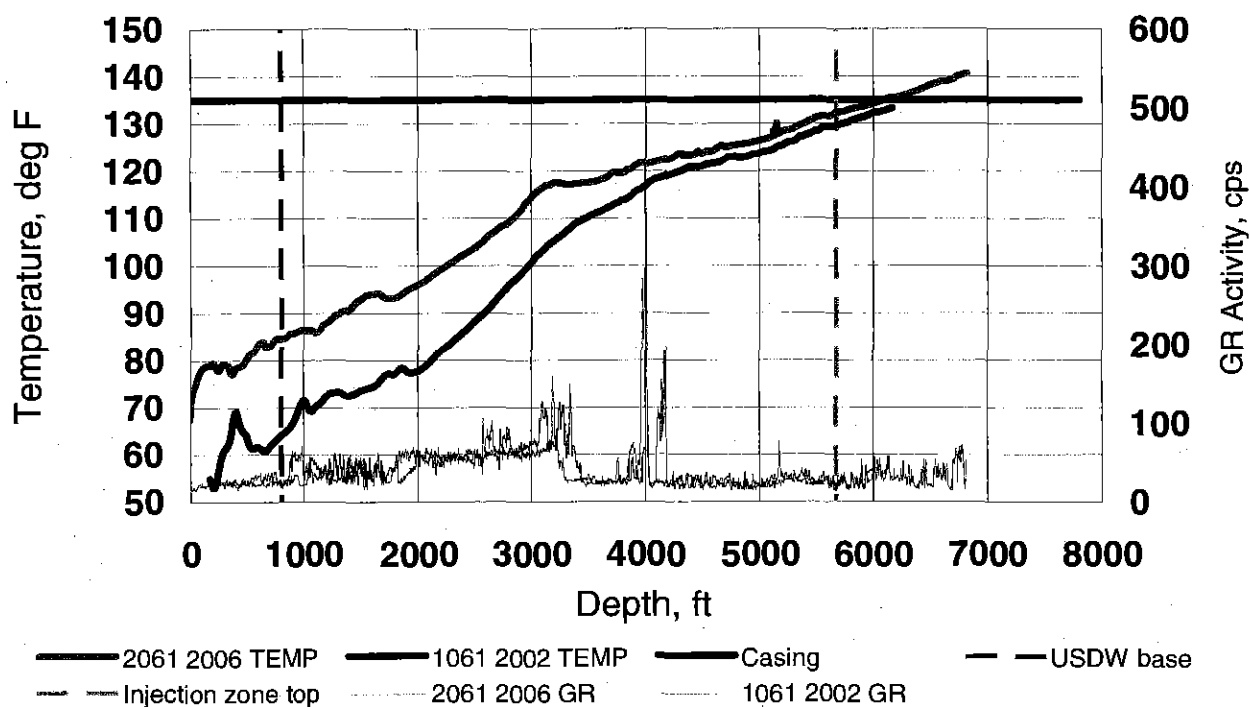
### Comments

Although the log is erratic, it does not indicate a loss of external mechanical integrity.

### Does the Well Have External Mechanical Integrity?

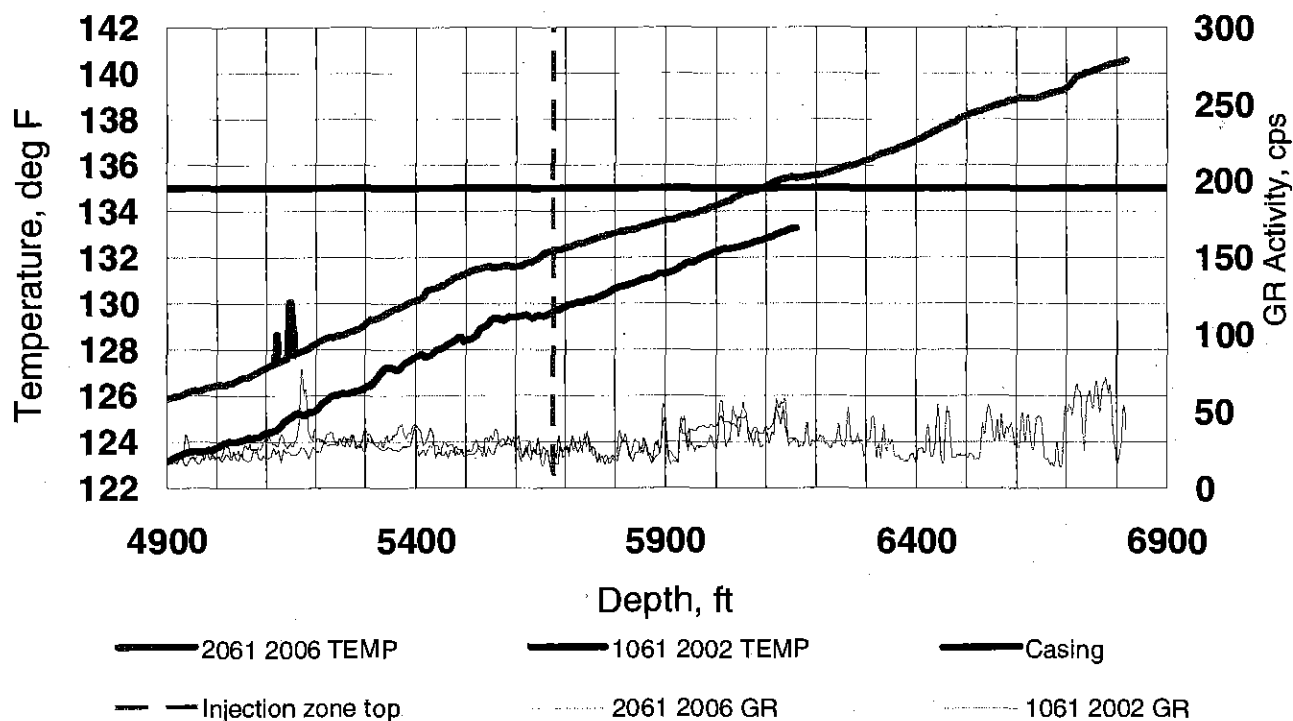
**YES**

### Mosaic 2061



In general, the log has many erratic little bumps and dips. Note that injection is occurring below the bottom of the casing, which was not logged.

### DETAIL OF INJECTION AND CONFINING ZONES



## REVIEW OF TEMPERATURE LOGS FOR PART (2) OF MI

Facility Name IMC Hersey		Operator Mosaic	
Well Name 2061		USEPA Permit Number MI-133-3G-A002	Analyst Patterson
County Osceola	State Michigan	Test Date November 9, 2006	Analysis Date November 27, 2006

### COMMENTS

In general, the temperature profile is somewhat erratic. Some of the character of the temperature log correlates well with the gamma activity. However, a very high (over 600 cps) gamma peak was recorded at about 4000', and another significant peak around 4170' (nearly 200 cps). Although the 2006 log for well #2061 is similar to the 2002 log for well #1061, the gamma peaks are absent in the the 2002, well #1061 trace. It is likely that the spikes are due to deposits on the inside of the casing.

The small peaks in the temperature profile around 5120' and 5140' are unexplained. When repeat logs were run of these depths, sharp peaks were logged at 5120', and then at 5105', 5150', and 5165'. The cause of the peaks, and the cause of their irreproduceability, are unknown.

The depths where injectate is emplaced cannot be determined because the log was not run to the base of the casing.

## REVIEW OF TEMPERATURE LOGS FOR PART (2) OF MI

Facility Name <b>Mosaic Potash, LLC</b>		Operator <b>Mosaic Potash, LLC</b>	
Well Name <b>2062</b>	Test ID Number <b>2006-077</b>	USEPA Permit Number <b>MI-133-3G-A002</b>	Analyst <b>William Bates</b>
County <b>Osceola</b>	State <b>Michigan</b>	Test Date <b>November 8, 2006</b>	Analysis Date <b>January 12, 2007</b>

### Well and Operational Information

Long String Casing Length, ft <b>7870</b>	Tubing Depth, ft <b>5990</b>	Date of Last Injection <b>May 24, 2004</b>	Is this a Multi-zone Facility? <b>Yes</b>
Depth to Base of USDW, ft. <b>804</b>	Name of Lowermost USDW <b>Glaical Drift</b>	Hour of Last Injection	Other Zones Used at Facility <b>Reed City</b>
Depth to Top of Permitted IZ, ft <b>6090</b>	Name of Injection Zone <b>Salina</b>	Volume Injected in Past Year, gal	Name of Shallower Injection Zone <b>Reed City</b>
Plugged Back Depth, ft. <b>7950</b>	Total Depth, ft <b>7950</b>	Does Injectate Temperature vary? <b>Not much</b>	Depth to Shallower Injection Zone, ft <b>4000</b>

### Calibration Information

### Logging Information

Low Gauge Temp, deg F <b>75.3</b>	High Gauge Temperature, deg. F <b>107.2</b>	Time of start of Logging	For Data Plot, Data Interval, ft <b>5</b>
Low Thermometer Temp, deg. F <b>73.8</b>	High Thermometer Temp, deg. F <b>105.6</b>	Days since last injection <b>898</b>	Max Log Depth, ft. <b>6810</b>
Were Log Readings Adjusted? <b>No</b>	Overall Appearance Good? <b>Yes</b>	Multiple Log Runs? <b>No</b>	Maximum Logging Speed, ft/min <b>28</b>

### Observations

Depth to Liquid Level, ft <b>415</b>	Top of Receptive Strata, ft. <b>N/A</b>	Depth of Most Extreme temp above <b>N/A</b>	Depth of Most Extreme temp in IZ, ft <b>N/A</b>
Temperature at Total Depth, deg F <b>140.95</b>	Bottom of Receptive Strata, ft. <b>N/A</b>	Most Extreme Temp above IZ, deg F <b>N/A</b>	Most Extreme Temp in IZ, deg F <b>N/A</b>
Top of Receptive Strata to top of IZ, ft <b>N/A</b>	Thickness of Receptive Interval, ft <b>N/A</b>		

### Analysis

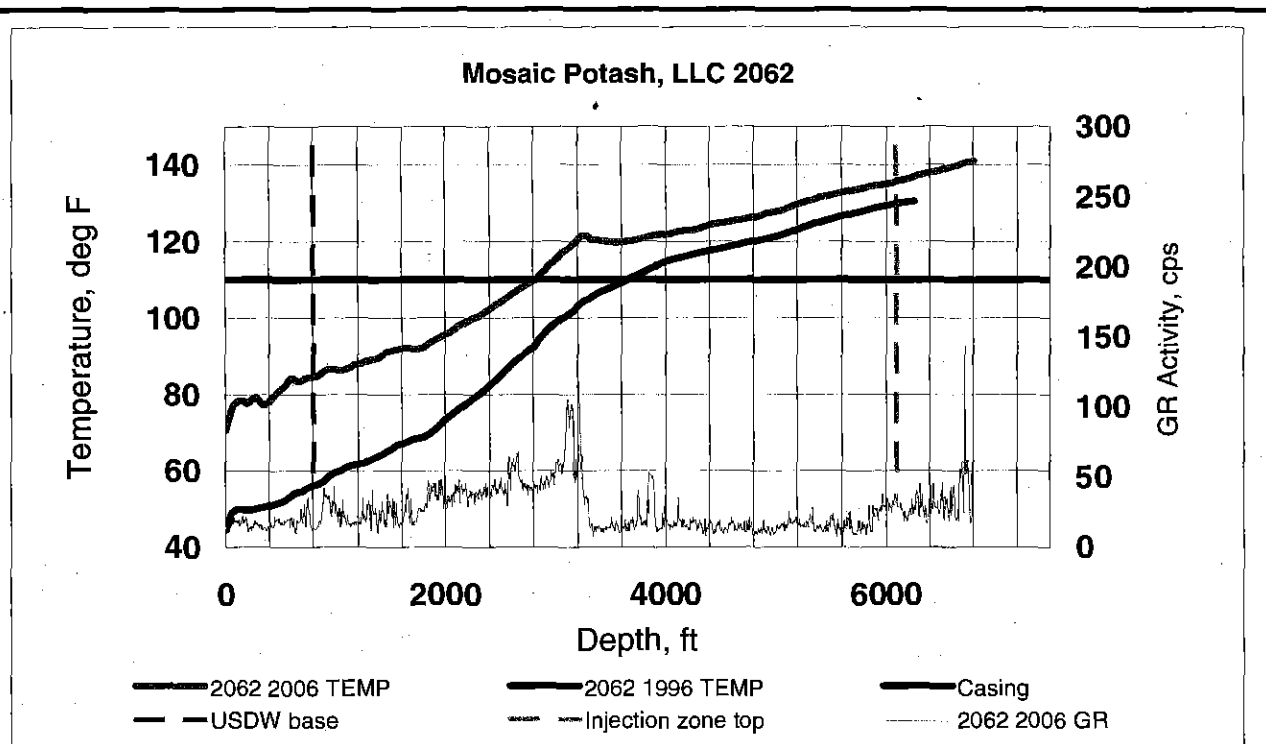
Is a Log Available for Comparison? <b>Yes</b>	Are traces Essentially Congruent? <b>Yes</b>	Depths of Intervals with Constant Temp over more than 50 ft. present? <b>N/A</b>	
What Well Log Used? <b>2062</b>	Is there a Pivot Point <b>No</b>	Top of Interval #1, ft <b>N/A</b>	Top of Interval #2, ft <b>N/A</b>
What Year? <b>1996</b>	If yes, What depth? ft <b>N/A</b>	Bottom of Interval #1, ft <b>N/A</b>	Bottom of Interval #2, ft <b>N/A</b>
	If Yes, What Temp? deg F <b>N/A</b>	Is Constant Temp More or Less than Temp Above? <b>N/A</b>	<b>N/A</b>
		Does this Suggest Flow? <b>N/A</b>	Does this Suggest Flow? <b>N/A</b>

### Comments

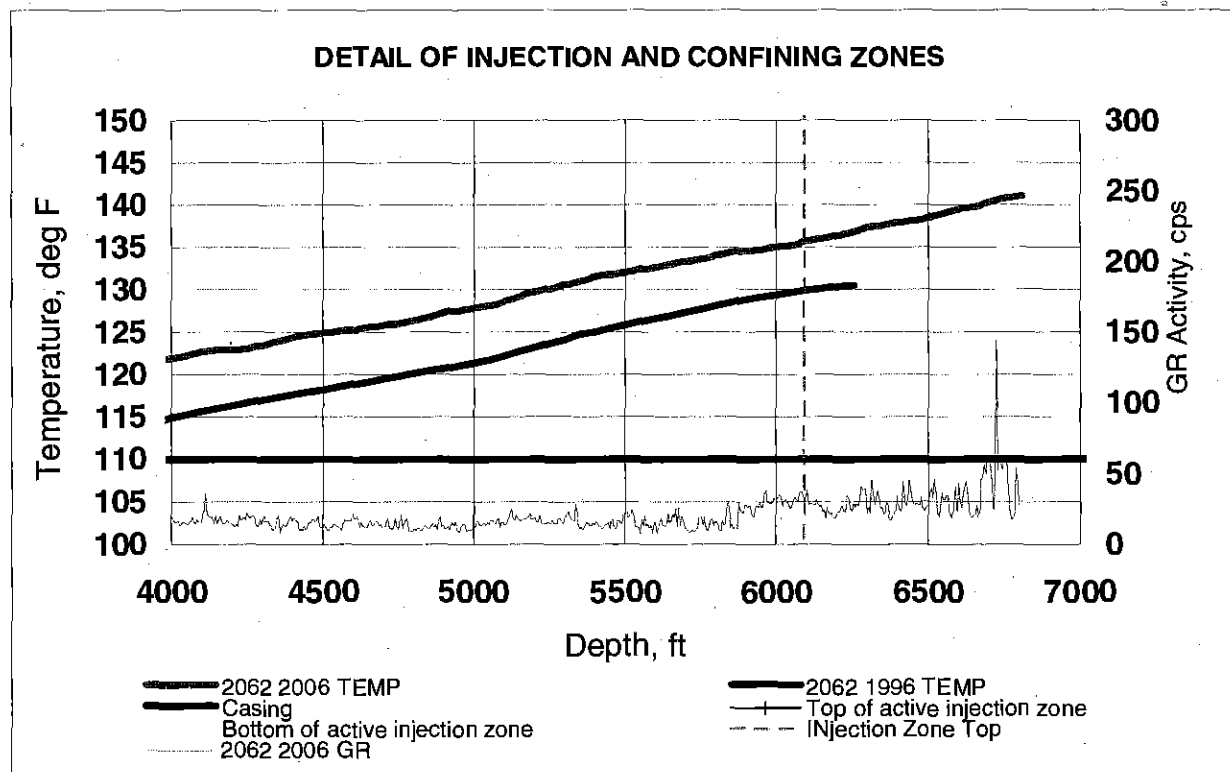
The temperature of the most recent injectate was 131 F.

### Does the Well Have External Mechanical Integrity?

**YES**



The data interval is different for the two logs. The log from 2006 has a data interval of 5 ft, whereas the data interval for the data from the 1996 is 50 ft. The 1996 log is also the preinjection log for this well. The first 2000 ft of the 2006 log appears to be very irregular. There is an anomaly around 3315 ft. In Michigan Wireline's report they state that this anomaly appears in other wells in the area. While this anomaly is found in other wells, it is the most pronounced in well 2062. This anomaly does not show up on the 1996 log.



The active injection zone cannot be identified in this temperature log. The temperature log was not lowered to a sufficient depth to identify it.

## REVIEW OF TEMPERATURE LOGS FOR PART (2) OF MI

Facility Name Mosaic Potash, LLC		Operator Mosaic Potash, LLC	
Well Name 2062		USEPA Permit Number MI-133-3G-A002	Analyst William Bates
County Osceola	State Michigan	Test Date November 8, 2006	Analysis Date January 12, 2007

### COMMENTS

Although this well passes part 2 of the MIT; the temperature log has raised some concerns. The hump in temperature log around 3315 ft has not been explained. This observation has been identified in other wells like 2061, 2031, and 2041. If this is a natural feature it seems odd that it does not show up in the other half of the paired wells. Please identify the reason for this anomaly.

## REVIEW OF TEMPERATURE LOGS FOR PART (2) OF MI

Facility Name <b>Hersey Facility</b>		Operator <b>Mosaic Potash Hersey, LLC</b>	
Well Name <b>2081</b>	Test ID Number <b>2006-097</b>	USEPA Permit Number <b>MI-133-3G-A002</b>	Analyst <b>Roy/Gerrish</b>
County <b>Osceola</b>	State <b>Michigan</b>	Test Date <b>December 13, 2006</b>	Analysis Date <b>January 8, 2007</b>

### Well and Operational Information

Long String Casing Length, ft <b>7718</b>	Tubing Depth, ft <b>5850</b>	Date of Last Injection <b>December 10, 2006</b>	Is this a Multi-zone Facility? <b>Yes</b>
Depth to Base of USDW, ft. <b>804</b>	Name of Lowermost USDW <b>Glacial Drift</b>	Hour of Last Injection <b>21:00</b>	Other Zones Used at Facility <b>Reed City</b>
Depth to Top of Permitted IZ, ft <b>5701</b>	Name of Injection Zone <b>Salina Group</b>	Volume Injected in Past Year, gal	Name of Shallower Injection Zone <b>Reed City</b>
Plugged Back Depth, ft. <b>7750</b>	Total Depth, ft <b>7750</b>	Does Injectate Temperature vary? <b>unknown</b>	Depth to Shallower Injection Zone, ft

### Calibration Information

Low Gauge Temp, deg F <b>55.3</b>	High Gauge Temperature, deg. F <b>104.4</b>
Low Thermometer Temp, deg. F <b>53.7</b>	High Thermometer Temp, deg. F <b>102.2</b>
Were Log Readings Adjusted? <b>unknown</b>	Overall Appearance Good? <b>Four spikes between 2950 - 3100'</b>

### Logging Information

Time of start of Logging <b>12:50</b>	For Data Plot, Data Interval, ft <b>5</b>
Hours since injection <b>65</b>	Max Log Depth, ft. <b>6475</b>
Multiple Log Runs? <b>No</b>	Maximum Logging Speed, ft/min <b>30</b>

### Observations

Depth to Liquid Level, ft <b>surface</b>	Top of Receptive Strata, ft. <b>N/A</b>	Depth of Most Extreme temp above <b>NA</b>	Depth of Most Extreme temp in IZ, ft <b>NA</b>
Temperature at Total Depth, deg F <b>136.44</b>	Bottom of Receptive Strata, ft. <b>log did not go deep enough</b>	Most Extreme Temp above IZ, deg F <b>NA</b>	Most Extreme Temp in IZ, deg F <b>N/A</b>
Top of Receptive Strata to top of IZ, ft <b>not discernible</b>	Thickness of Receptive Interval, ft <b>NA</b>		

### Analysis

Is a Log Available for Comparison? <b>yes, two</b>	Are traces Essentially Congruent? <b>no</b>	Depths of Intervals with Constant Temp over more than 50 ft. present? <b>no</b>	
What Well Log Used? <b>2082</b>	Is there a Pivot Point <b>no</b>	Top of Interval #1, ft <b>NA</b>	Top of Interval #2, ft <b>NA</b>
What Year? <b>2006</b>	If yes, What depth? ft <b>NA</b>	Bottom of Interval #1, ft <b>NA</b>	Bottom of Interval #2, ft <b>NA</b>
What Well Log Used? <b>2081</b>	If Yes, What Temp? deg F <b>NA</b>	Is Constant Temp More or Less than Temp Above? <b>NA</b>	<b>NA</b>
What Year? <b>1998</b>		Does this Suggest Flow? <b>NA</b>	Does this Suggest Flow? <b>NA</b>

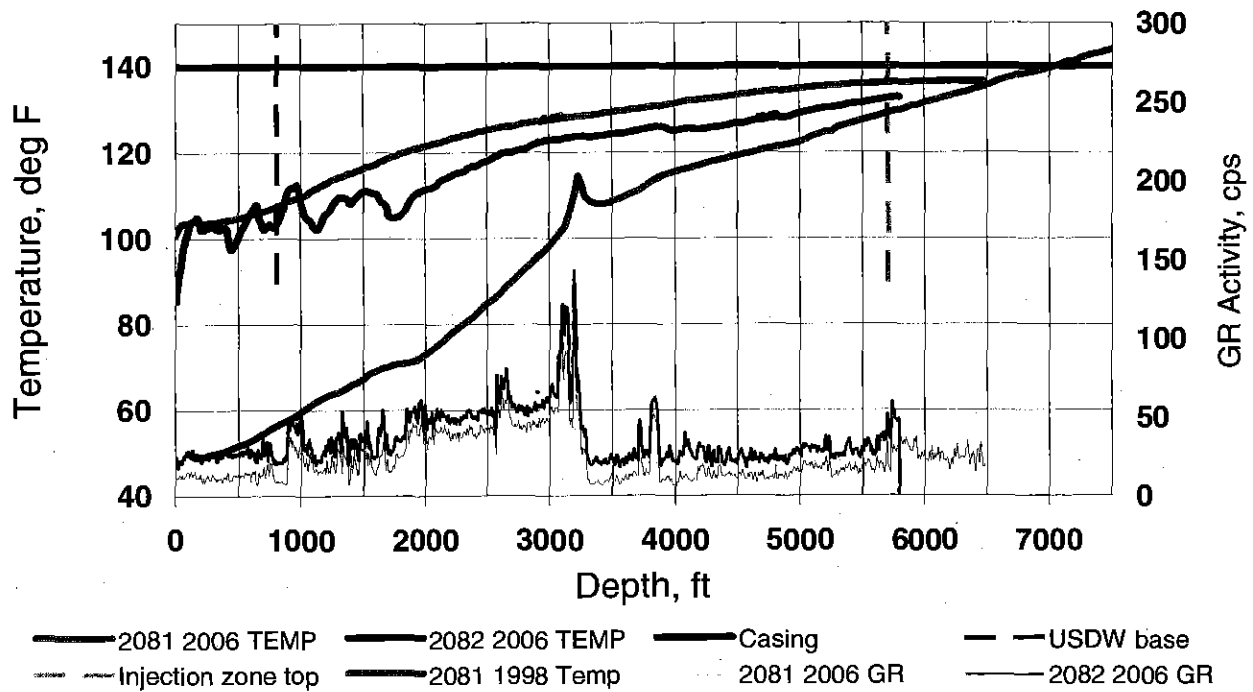
### Comments

Traces of the 2006 2081 and 2082 wells are somewhat congruent below about 2000 ft, though the 2081 lacks the change in 2082 at just below 4000 ft. Above 2000 ft they have radically different character.

### Does the Well Have External Mechanical Integrity?

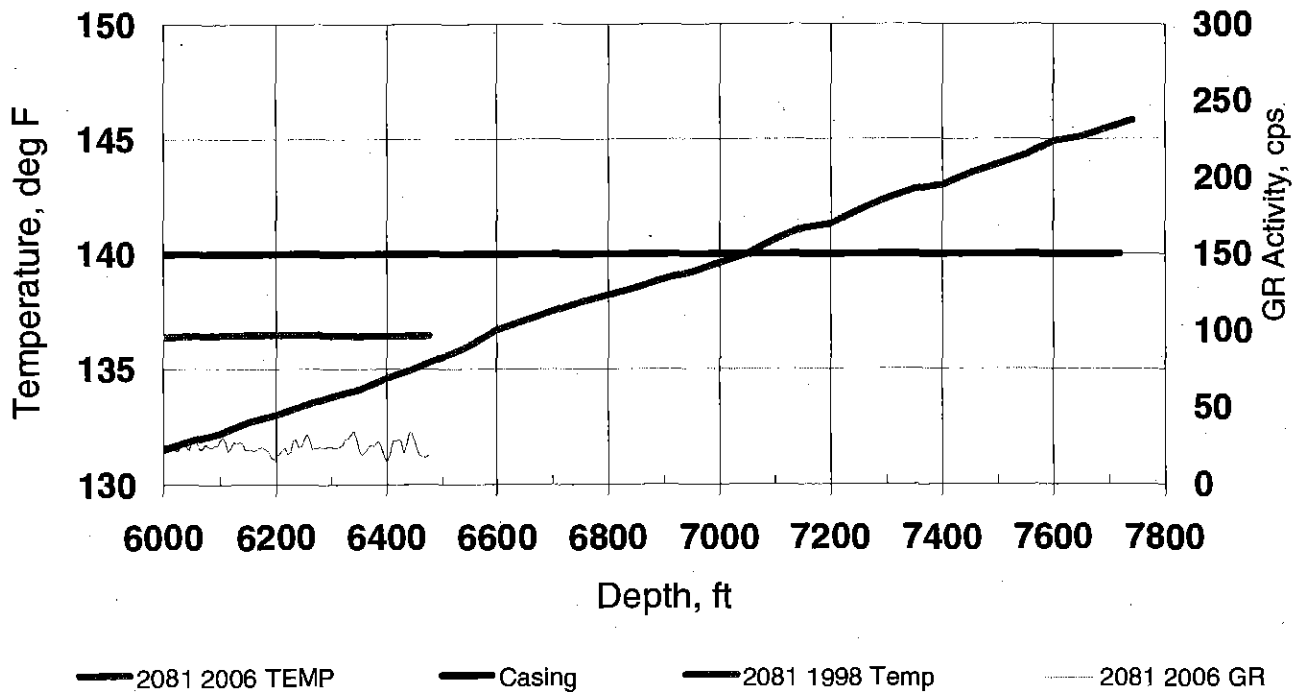
**External mechanical Integrity has not been demonstrated.**

### Mosaic Potash Hersey, LLC 2081



Note varying character between the two 2006 traces.

### DETAIL OF INJECTION AND CONFINING ZONES



2006 logs do not go deep enough to detect the active injection zone; 2082 log only goes to 5800 ft.



## REVIEW OF TEMPERATURE LOGS FOR PART (2) OF MI

Facility Name Hersey Facility		Operator Mosaic Potash Hersey, LLC	
Well Name 2081		USEPA Permit Number MI-133-3G-A002	Analyst Roy/Gerrish
County Osceola	State Michigan	Test Date December 13, 2006	Analysis Date January 8, 2007

### COMMENTS

Temperature at the surface is unusually high - approximately 100 degrees. Although this is noted in the company's report, no explanation is given. Well #2081 was last used 65 hrs prior to being logged - but there is no indication whether it was used for injection or production. The company should be asked to provide this information. This well was drilled in November 1997; the 2006 log is radically different than the 1998 log. In 1998, the peak at about 3250 ft was attributed to this well's borehole passing near the borehole of the Woodward well. There is no sign of this in the 2006 log. The small blips between 2950 and 3100 ft are not repeatable; they are attributed in the report to fluid inside the casing but why this would be so is not explained. Similar small peaks are found in other Mosaic logs at widely varying depths, so they would seem to have an electrical or mechanical cause and not be due to lithology or flow. Although the top of the permitted injection zone is at 5701 ft, the active injection is taking place below 7000 ft.

This log does not have the wide temperature fluctuations between the surface and about 2000 ft seen in all but one other of the other 2000-series wells. (The other is #2032.) These variations are particularly wide in this well's partner, #2082. They are due to differences in the thermal conductivity of the materials surrounding the well in which the gradient between the injectate and the rock is steep. (That is, their temperatures differ greatly.) As a result, there can be sharp changes in temperatures along the well bore when there is no vertical movement of fluids. However, temperature effects due to conductivity differences are overwhelmed by convective effects when there is vertical movement of liquid. It is possible that those variations are masked in this well by the stronger influence of flow in the well bore. This flow could be inside or outside the casing. We need more information about how the well was tested and its most recent use to help determine this. Mosaic must prove that this apparent flow is inside the casing. This might require re-running the log.

This log bears some resemblance to that of #2032 though the temperature in #2032 is lower than in this well down to about 6000 ft. Below 6000 ft, the temperature in #2032 continues to increase, while in this well it is approximately constant. Although the monthly monitoring reports show activity in the two wells in this pair (2081 and 2082), it is only in combination, not which was being used for injection and which for production.

## REVIEW OF TEMPERATURE LOGS FOR PART (2) OF MI

Facility Name <b>Hersey Brine Field</b>		Operator <b>Mosaic Potash Hersey</b>	
Well Name <b>#2082</b>	Test ID Number <b>2006-098</b>	USEPA Permit Number <b>MI-133-3G-A002</b>	Analyst <b>Gerrish</b>
County <b>Osceola</b>	State <b>Michigan</b>	Test Date <b>December 13, 2006</b>	Analysis Date <b>January 8, 2007</b>

### Well and Operational Information

Depth to Top of Perfs, ft <b>7612</b>	Tubing Depth, ft	Date of Last Injection <b>December 11, 2006</b>	Is this a Multi-zone Facility? <b>Yes</b>
Depth to Base of USDW, ft. <b>801</b>	Name of Lowermost USDW <b>Glacial Drift</b>	Hour of Last Injection <b>09:00</b>	Other Zones Used at Facility <b>Reed City Dolomite</b>
Depth to Top of Permitted IZ, ft <b>5701</b>	Name of Injection Zone <b>Salinas Group</b>	Volume Injected in Past Year, gal	Name of Shallower Injection Zone <b>Reed City Dolomite</b>
Plugged Back Depth, ft. <b>7715</b>	Total Depth, ft <b>7715</b>	Does Injectate Temperature vary?	Depth to Shallower Injection Zone, ft <b>3900</b>

### Calibration Information

Low Gauge Temp, deg F <b>53.7</b>	High Gauge Temperature, deg. F <b>102.4</b>
Low Thermometer Temp, deg. F <b>55.3</b>	High Thermometer Temp, deg. F <b>104.2</b>
Were Log Readings Adjusted? <b>No</b>	Overall Appearance Good? <b>Yes</b>

### Logging Information

Time of start of Logging <b>06:51</b>	For Data Plot, Data Interval, ft <b>5</b>
Hours since injection <b>47</b>	Max Log Depth, ft. <b>5793</b>
Multiple Log Runs? <b>No</b>	Maximum Logging Speed, ft/min <b>30</b>

### Observations

Depth to Liquid Level, ft <b>0</b>	Top of Receptive Strata, ft. <b>Not logged</b>	Depth of Most Extreme temp above <b>N/A</b>	Depth of Most Extreme temp in IZ, ft <b>N/A</b>
Temperature at Total Depth, deg F <b>132.85</b>	Bottom of Receptive Strata, ft. <b>Not logged</b>	Most Extreme Temp above IZ, deg F <b>N/A</b>	Most Extreme Temp in IZ, deg F <b>N/A</b>
Top of Receptive Strata to top of IZ, ft <b>N/A</b>	Thickness of Receptive Interval, ft <b>N/A</b>		

### Analysis

Is a Log Available for Comparison? <b>Yes</b>	Are traces Essentially Congruent? <b>No</b>	Depths of Intervals with Constant Temp over more than 50 ft. present? <b>N/A</b>	
What Well Log Used? <b>#2082</b>	Is there a Pivot Point <b>No</b>	Top of Interval #1, ft <b>N/A</b>	Top of Interval #2, ft <b>N/A</b>
What Year? <b>1998</b>	If yes, What depth? ft <b>NA</b>	Bottom of Interval #1, ft <b>N/A</b>	Bottom of Interval #2, ft <b>N/A</b>
	If Yes, What Temp? deg F <b>N/A</b>	Is Constant Temp More or Less than Temp Above? <b>N/A</b>	<b>N/A</b>
		Does this Suggest Flow? <b>N/A</b>	Does this Suggest Flow? <b>N/A</b>

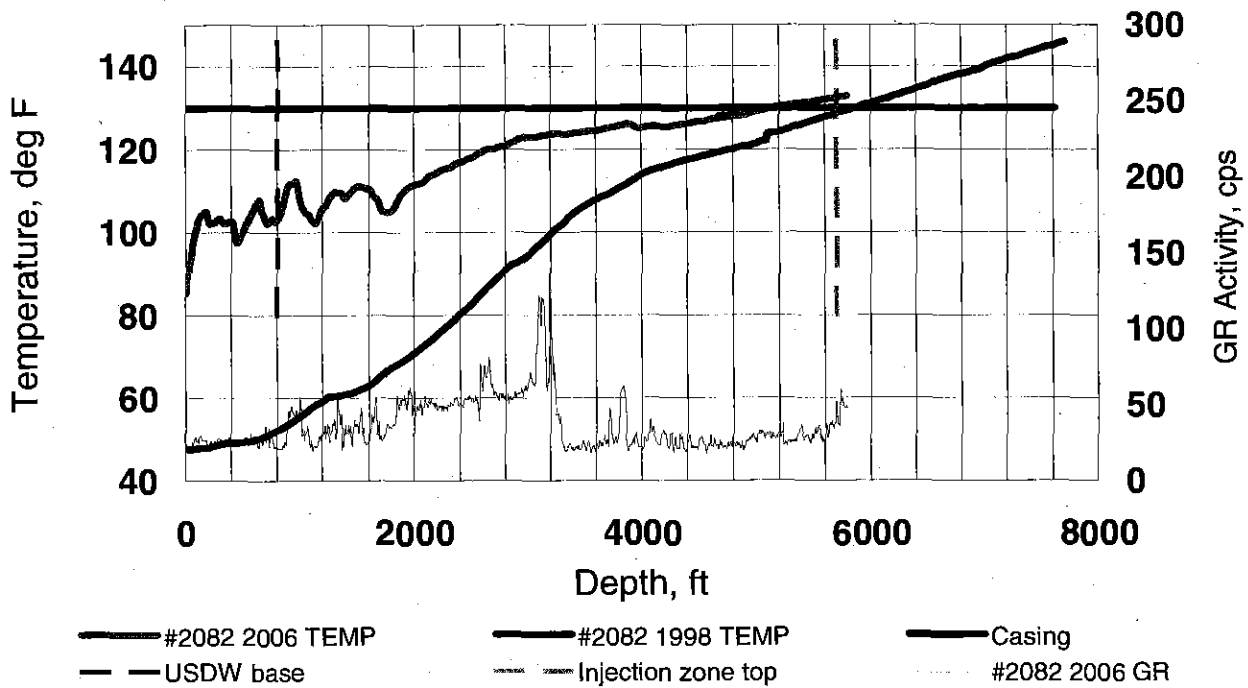
### Comments

Preparation of the well and logging method are acceptable. Results confirm long term injection of warm injectate.

### Does the Well Have External Mechanical Integrity?

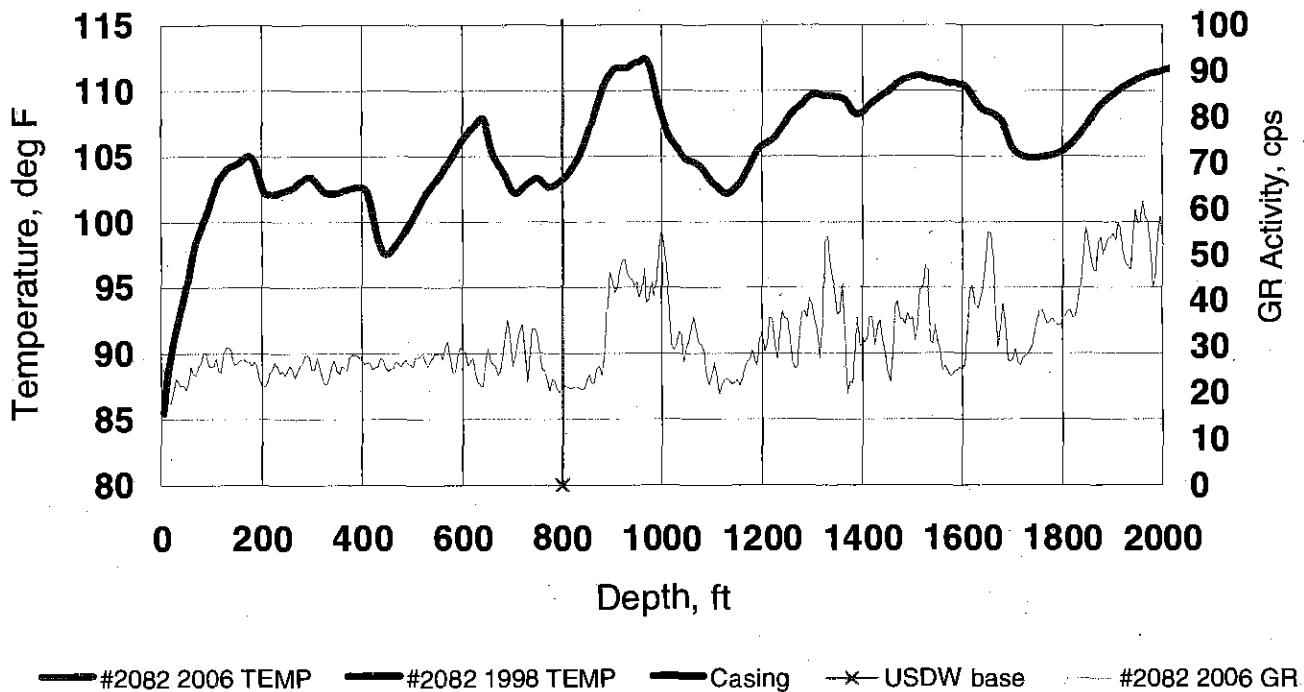
**YES**

### Mosaic Potash Hersey #2082



The high temperatures through the well bore indicate long-term injection of a relatively warm waste. The irregular pattern above 2000 feet, probably indicates the presence of aquifers with some flow.

### DETAIL OF SHALLOW ZONES



Note the general correlation of lower temperatures to cleaner lithology and possible aquifers.

## REVIEW OF TEMPERATURE LOGS FOR PART (2) OF MI

Facility Name Hersey Brine Field		Operator Mosaic Potash Hersey	
Well Name #2082		USEPA Permit Number MI-133-3G-A002	Analyst Gerrish
County Osceola	State Michigan	Test Date December 13, 2006	Analysis Date January 8, 2007

### COMMENTS

The log looks quite normal given the circumstances of the logging operation. The temperature profile still includes reversals of gradient because of the short shut-in time relative to the length of injection and difference of the geothermal temperatures along the well bore and the injectate.

Tool anomalies are observed on the main pass centered at depths of 4680, 4700, 4752, 4990, and 4810 feet. Repeat runs were made to check these areas. The anomalies did not repeat at those depths, but similar anomalies were observed in the same depth range.



<b>Well Number</b>	<b>Construction Date</b>	<b>Date of Last Mechanical Integrity Test</b>	<b>Date of Newly Completed Mechanical Integrity Test</b>
1011	11/17/84	None	
1012	01/04/85	None	
1013	06/11/92	None	
1014	07/02/95	None	
1031	10/15/94	None	12/08/06
1032	11/15/94	10/14/96	
1041	05/23/90	None	11/22/06
1042	03/04/94	03/04/94	12/14/06
1044	11/28/93	None	11/22/06
1051	05/25/85	None	01/25/07
1054	08/02/93	None	01/25/07
2031	03/27/85	None	11/02/06
2032	11/15/94	10/14/96	10/18/06
2041	07/23/00	11/30/00	10/31/06
2042	08/29/00	11/30/00	11/08/06
2061	05/30/85	None	11/09/06
2062	08/20/96	10/14/96	11/08/06
2081	05/15/98	05/13/98	12/13/06
2082	10/22/97	05/13/98	12/13/06

**COMPLAINANT'S  
EXHIBIT 6**



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF

MEMORANDUM

SUBJECT: Revised UIC Region 5 Administrative Order Penalty Policy

TO: Addressees

FROM: Edward P. Watters, Chief *Ed*  
Safe Drinking Water Branch

Eric J. Cohen, Chief *Eric*  
Air, Water, Toxics  
and General Law Branch

Enclosed please find the revised UIC Region 5 Proposed Penalty Policy. The effective date of this policy is September 21, 1994. Note the changes made to the Penalty Policy on page three and in Appendix II. More specifically, the low seriousness level in the penalty range on page three has changed from \$300-\$1,000 to \$200-\$1,000.

Appendix II to the Penalty Policy discusses the seriousness level for a "failure to submit an annual report" violation and a "failure to submit a quarterly report" violation. Note that Appendix II assesses a flat rate for quarterly or annual report violations of \$450 and \$1,400, respectively. Appendix II should only be used if a well is not in operation.

Addressees:

Air, Water, Toxics and General Law Branch Attorneys

Multi-Media Branch Attorneys

Section Chief  
Underground Injection Control Section

Unit Chief  
Underground Injection Control Section, Enforcement Unit

Underground Injection Control Section, Enforcement Unit

Enclosure



**REGION 5  
UNDERGROUND INJECTION CONTROL  
PROPOSED ADMINISTRATIVE ORDER  
PENALTY POLICY**

**EFFECTIVE DATE: SEPTEMBER 21, 1994**

## Preface

This Administrative Order Civil Penalty Policy should be used by Region 5 personnel to calculate administrative penalties assessed against owners and operators who violate the Safe Drinking Water Act and Underground Injection Control regulations. It supersedes the Interim Proposed Administrative Order Penalty Policy adopted by Region 5 on March 25, 1991.

This policy should not be used for either civil or criminal judicial enforcement in federal court. However, if an administrative penalty amount exceeds the \$125,000 statutory maximum, Regional personnel should consider whether to refer the case for civil enforcement action.

Section 1423 of the Safe Drinking Water Act (SDWA), requires that the Administrator consider six factors when assessing a civil penalty. 42 U.S.C. § 300h-2. The authority to assess penalties under section 1423 of the SDWA has been delegated from the Administrator of the United States Environmental Protection Agency to the Region 5 Regional Administrator and then to the Director of Region 5's Water Division. The factors are:

1. The seriousness of the violation(s);
2. The economic benefit, if any, resulting from the violations;
3. Any history of such violations by the owner/operator;
4. Good faith efforts by the violator to comply with the appropriate UIC requirements;
5. The economic impact of the penalty on the violator.
6. Such other matters as justice may require.

Typically, the seriousness of the violation(s) is the major factor considered when calculating a penalty. This administrative penalty policy uses both a matrix, with ranges of penalty amounts for different types of violations, and a narrative approach to address all of the pertinent statutory factors in a particular case. The narratives in the Appendix are to be used, in a proposed penalty calculation memorandum, to explain each violation and what impact it may have on the environment.

# I. STATUTORY PENALTY FACTOR 1: SERIOUSNESS OF THE VIOLATION

The penalty for seriousness of the violation(s) shall be calculated by multiplying a penalty number (A), which reflects the level of seriousness and the number of wells in violation; by the length of violation (B):  $(A) \times (B) = C$

A. The seriousness of the violation should reflect the potential of a particular violation to endanger underground sources of drinking water (USDW). <sup>1/</sup> This factor is, in turn, dependent on the number of wells in violation, as well as the importance of maintaining the integrity of the SDWA's regulatory scheme. Each violation is assigned a penalty level (High, Medium or Low) which indicates the seriousness of each violation.

Major UIC violations can be categorized in terms of seriousness, with the High Level category listing the most severe violations and the Low Level category listing the least severe violations.

**TABLE I: SERIOUSNESS OF THE VIOLATION**

	<u>HIGH LEVEL</u>	<u>MEDIUM LEVEL</u>	<u>LOW LEVEL</u>
1.	Failure to comply with an Administrative Order	Failure to demonstrate financial responsibility.	Failure to retain records
2.	Unauthorized injection.	Failure to report within 24 hours.	Failure to submit monitoring report.
3.	Failure to demonstrate Mechanical Integrity.	Failure to provide written report of noncompliance.	Failure to submit required information.
4.	Failure to conduct a mechanical integrity test.	Failure to provide access to site for inspection.	
5.	Failure to prevent movement into a USDW of fluids that may cause a violation of maximum contamination levels (MCLs).	Failure to submit plugging and abandonment plan.	Failure to submit fluid analysis.

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<sup>1/</sup> Part C of the SDWA, 42 U.S.C. § 300h, indicates that EPA has a duty to insure USDWs will not be endangered by underground injection. See 42 U.S.C. § 300h(b)(2), (b)(3)(B)(i), (ii), (c) and (d); 42 U.S.C. § 300h-1(a). The term "endanger" is defined in the SDWA to include any injection which may result in the presence of the contaminants in USDWs. 42 U.S.C. § 300h(d)(2).

HIGH LEVEL	MEDIUM LEVEL	LOW LEVEL
6. Construction conversion of new well prior to permit issuance.	Failure to submit final plugging and abandonment report.	
7. Failure to submit well inventory.	Failure to submit permit application in a timely manner.	
8. Substantial failure to comply with Operating Requirements.	Failure to properly transfer a well permit.	
9. Failure to Comply with a Compliance Schedule in a Permit.	Failure to submit transfer of ownership.	
10. Exceeding maximum injection pressure.	Failure to monitor in accordance with permit	
11. Failure to case and cement to prevent fluid movement into USDW.		
12. Failure to notify Region 5 of well abandonment or conversion.		
13. Failure to plug a well 2 years after cessation of operation		

The maximum penalty amount which can be administratively assessed for Class II wells is \$5,000 per day per violation. Other classes of wells are statutorily limited to the collection of \$10,000 per day, per violation.

U.S. EPA should choose a number within the penalty range using Table II, which best signifies: (1) the seriousness of each violation within the penalty cluster, based on the facts of the case and the potential of contamination of underground sources of drinking water; (2) the number of wells in violation, and (3) the importance of the violation to the regulatory scheme which protects underground sources of drinking water.

If an owner/operator is operating more than one well in violation, this fact mandates the selection of a penalty figure at the higher end of the penalty range.

**TABLE II: PENALTY RANGE BASED ON SERIOUSNESS LEVEL**

<u>SERIOUSNESS LEVEL</u>	<u>All Classes of Wells</u>	
Low	\$200	- \$1000
Medium	\$500	- \$1500
High	\$1,000	- \$10,000

B. The length of violation should also be a factor in calculating the seriousness of each violation because each additional day of violation multiplies the risk of underground sources of drinking water contamination. One day of violation in any month constitutes one month of violation for that particular month for the purpose of this penalty policy. However, U.S. EPA enforcement personnel should consider choosing a penalty figure at the high end of the penalty range if the Respondent had several days of violation within a particular month. The number chosen from Table II, above, should be multiplied by the number of months in violation:

$$A \quad * \quad B \quad = \quad C$$

where A= penalty range from Table II, B= number of months in violation, and C= seriousness of violation. Cases which include reporting violations may be impacted by the Paperwork Reduction Act a factor which should be considered when calculating the gravity portion of the penalty.\* For a "failure to submit an annual report" violation or a "failure to submit a quarterly report" violation involving a well which is not in operation, see Appendix II. The "seriousness of violation" level for all other "failure to report" violations should be calculated in accordance with Table II.

## **II. STATUTORY PENALTY FACTOR 2: THE ECONOMIC BENEFIT WHICH ACCRUED FROM NONCOMPLIANCE**

In order to insure that the proposed penalty reflects the economic benefit of noncompliance mandated by the SDWA, it is necessary to have reliable methods to calculate economic benefit. Economic Benefit should address two areas: (1) costs delayed by noncompliance; (2) costs avoided completely by noncompliance.

### **A. Benefit from delayed costs**

In many instances, the economic advantage to be derived from noncompliance is the ability to delay making the expenditures necessary to achieve compliance. For example, a class II operator may not conduct a mechanical integrity test until an enforcement action is brought by U.S. EPA or the state. By deferring this cost until after the enforcement action is

brought, the facility derives an economic benefit over its competitors who conduct timely mechanical integrity tests.

The economic benefit of delayed compliance should be calculated using the "Methodology for Computing the Economic Benefit of Noncompliance," which is Technical Appendix A of the BEN User's Manual. This document provides a method for computing the economic benefit of noncompliance based on a detailed economic analysis. The BEN program is a computer model used by U.S. EPA to compute economic benefit.

The BEN methodology takes into account the following costs: initial capital investments, either one time or recurring; one time nondepreciable expenditures, either tax deductible or not; and avoided annual expenses. BEN can also be used to calculate the present value of wrongful profits.

If there are instances where the BEN model cannot capture the actual economic benefit which has accrued to the violator, then the penalty calculation should include any economic benefit calculated through any reasonable methodology. Any methodology reasonably constructed to yield a company's economic benefit, especially methods which incorporate actual or reasonably estimated costs, should be accepted as a "reasonable methodology."

#### B. Benefit from avoided costs

Many types of violations enable a violator to permanently avoid costs associated with compliance. These might include cost savings for failure to sample for total suspended solids and pH for several days or weeks in accordance with a Class I non-hazardous permit. Note that in this instance, the violator cannot "turn back the clock" and sample on days already missed.

The benefit from avoided costs must also be computed using methodology in the Technical Appendix A of the BEN User's Manual. The benefit from delayed and avoided costs is calculated together using the BEN computer program, to arrive at an amount equal to the economic benefit of noncompliance for the period from the first date of violation until the date of compliance. The economic benefit should be added to the amount calculated under part I of the policy prior to the application of any of the factors below. Again, if BEN is not appropriate, U.S. EPA enforcement personnel should use another reasonable methodology.

### **III. STATUTORY PENALTY FACTOR 3: PRIOR HISTORY OF NONCOMPLIANCE**

Respondent's history of compliance should be considered in any UIC penalty calculation. Where the respondent has a series of repeat violations or a series of recent violations which have

not been corrected satisfactorily, a factor should be applied in determining the penalty amount. That factor should increase the penalty from 5 to 100%.

Evidence that the U.S. EPA or a state agency has previously brought an enforcement action against a party demonstrates that the party was not deterred by a previous governmental enforcement response. In addition, it is important to consider compliance at other sites owned or operated by the violator and violations of state or local UIC regulations, as well as capitalize the violator's response to correcting such violations. **THIS FACTOR MAY ONLY BE USED TO INCREASE A PENALTY.**

In determining the size of the adjustment, the following points should be considered:

- similarity of the prior violations to the violation(s) in question;
- time elapsed since the prior violation;
- the number of prior violations;
- the violator's response to a prior violation.

A violation should generally be considered similar if it involves:

- violation of the same permit
- violation of the same UIC standard
- violation at the same injection well
- violation of the same or similar statutory or regulatory provision
- a similar act or omission.

A prior violation includes any act or omission resulting in a state, local or federal enforcement response with regard to an injection well, i.e. notice of violation or noncompliance, warning letter, administrative order, federal compliance order or complaint, consent decree or judicial order. It also includes an act or omission for which the violator was previously given written notification, however informal, that a regulating agency believes a violation exists. The written notification of the prior violation must have been issued within five years of Region 5's discovery of the violation alleged in the Proposed Administrative Order. Written notification dated earlier than five years before U.S. EPA's discovery of the violation may not be considered in determining whether there is a prior history of noncompliance.

With regard to large corporations with many divisions or wholly owned subsidiaries, U.S. EPA will begin with the assumption that the parent corporation was involved in the previous violation only if the violations at several different sites indicate a corporate indifference to environmental

protection. The adjustment factor for a history of noncompliance should apply unless the violator can demonstrate to the Region that the other violating corporate facilities are under totally independent control.

#### **IV. STATUTORY PENALTY FACTOR 4: ECONOMIC IMPACT OF THE PENALTY**

Section 1423(c) (4) (B) of the SDWA requires the U.S. EPA to consider the economic impact of the penalty on the Respondent, when determining the amount of the civil penalty. The U.S. EPA shall make every effort to obtain information concerning the Respondent's ability to pay by reviewing Dunn & Bradstreet reports, tax forms, or financial statements. Based on the collected information, the U.S. EPA will determine whether the Respondent has the ability to pay at the time the Proposed Administrative Order is issued.

Generally, the U.S. EPA will not seek a penalty that clearly is beyond the Respondent's ability to pay. However, after U.S. EPA has gathered information which indicates that the Respondent is able to pay a penalty, the Respondent has the burden to rebut U.S. EPA's assumption if it raises an inability to pay argument. Sufficient documentation should be obtained by U.S. EPA on the Respondent's inability to pay claim. Sufficient documentation may include tax returns for three (3) successive years, balance sheet, and income statements. **THIS FACTOR MAY ONLY BE USED TO DECREASE THE PENALTY.**

#### **V. STATUTORY PENALTY FACTOR 5: GOOD FAITH EFFORTS OF RESPONDENT TO COMPLY WITH UIC REQUIREMENTS**

Section 1423(c) (4) (B) of the SDWA requires the U.S. EPA to consider the Respondent's good faith efforts to comply with the UIC requirements. The civil penalty may be adjusted downward by as much as 50% if the Respondent has attempted in good faith to comply with the SDWA. However, the penalty may be adjusted upward by as much as 50% if the violator has taken no steps to comply or has ignored the violations.

Good faith efforts to comply may include the following:

##### **1. Prompt reporting of noncompliance**

Prompt reporting of noncompliance by the violator can show cooperation. The violator's self reporting may result in a downward adjustment of the penalty, if the self reporting is not required by law.



## 2. Prompt correction of environmental problems

The penalty may be adjusted downward, when the Respondent promptly corrects an environmental problem prior to discovery of the violation by the U.S. EPA or state or subsequent to an inspection but prior to the formal commencement of an enforcement action by a governmental entity.

### **VI. STATUTORY PENALTY FACTOR 6: OTHER FACTORS AS JUSTICE MAY REQUIRE**

Should a case arise in which U.S. EPA determines that there are no grounds for adjustment of the proposed civil penalty based on financial information or other facts, or no showing of inability to continue in business, and that equity would not be served by adjusting the proposed penalty by only the allowable 50% good faith effort adjustment, the Regional Program Division Director may approve an extraordinary adjustment to the proposed penalty for up to an additional 20%. This adjustment is only appropriate in extraordinary circumstances, including significant litigation risk, and is not to be used routinely.

If a "special circumstances" reduction of the proposed civil penalty is granted, the case file must include substantive reasons why the extraordinary reduction of the civil penalty was appropriate, including: (1) setting forth the facts of the case; (2) why the facts of the case would indicate that the penalty assessed under this Penalty Policy is inequitable; (3) how all other methods for adjusting or revising the proposed penalty would not adequately resolve the inequity; and (4) the manner in which the extraordinary adjustment of the penalty effectuated the purposes of the SDWA. The Regional Program Division Director's written concurrence for the extraordinary reduction must be incorporated into the case file.

Supplemental Environmental Projects ("SEP") may be employed by the Respondent to reduce the penalty paid to the United States. Any SEP must conform to U.S. EPA's current SEP policy, and may not be used to mitigate the penalty to a value below the economic benefit component.

## APPENDIX I

Unauthorized Injection

The rule at 40 C.F.R. § 144.11 prohibits all injection that is not authorized either by rule or permit. An owner/operator required to obtain a permit for a well that is not authorized by rule must do so, and receive authorization to inject before injection can begin. Failure to obtain the required permit demonstrates a disregard for the UIC program requirements.

Region 5 has established a formal permitting process to ensure that wells are properly constructed in an environmentally sound manner and with community involvement. Unauthorized injection shortcuts and eliminates the review and comment processes. Most importantly, unauthorized injection creates the possibility that a well might be operated without proper safeguards in place to protect underground sources of drinking water.

Failure to Maintain Permitted Pressure on the Annulus**1. positive pressure**

Under the terms of a permit issued by Region 5, the Respondent must maintain a positive pressure of at least [varies from well to well] psi, measured at the surface, at all times except during workovers or maintenance, on the annulus.

If the ability to maintain annulus pressure is lost, the mechanical integrity of the well may be compromised. In response, the respondent must cease injection, determine if

mechanical integrity has been lost, and make any necessary repairs.

## **2. positive pressure differential**

Under the terms of a permit issued by Region 5, the Respondent must maintain a positive pressure differential in the annulus of at least [varies from well to well] psi, measured at the surface, at all times throughout the entire length of the tubing, except during workovers or times of annulus maintenance

If the ability to maintain the pressure differential in the annulus is lost, the mechanical integrity of the well may have been compromised. The Respondent must cease injection, determine if mechanical integrity has been lost, and make any necessary repairs. Failure to maintain this minimum pressure differential could lead to contamination in the event of a mechanical integrity loss.

### **Exceedance of Maximum Injection Pressure**

Pursuant to 40 C.F.R. § 147.1154, the owner or operator of a rule-authorized Class II enhanced oil recovery or a hydrocarbon storage well is required to inject at pressure no greater than that established by the Regional Administrator. For permitted wells, pursuant to 40 C.F.R. § 144.52(a)(3), the permit shall establish any maximum injection pressures necessary to assure that fractures are not initiated in the confining zone, that injection fluids do not migrate into any underground source of drinking water, that formation fluids are not displaced into any underground source of drinking water, and to assure that

Respondent maintains compliance with the part 146 operating requirements. The pressure is pre-determined by an established mathematical formula using fluid and rock characteristics and other significant variables.

By exceeding the maximum injection pressure, operators can inject fluids at a greater rate and volume than allowed. Formation damage may occur, and may subsequently reduce rock permeability, thus harming the well by restricting the amount of fluid that can be injected. Exceedance of maximum injection pressure may also fracture the rock, allowing more fluids to be injected and to potentially migrate through the fractures to the USDW. These fractures can rarely "heal" or decrease and indicate permanent damage. Damage is unpredictable due to rock and fluid composition, pressure, temperature, and depth. Therefore, this violation is considered serious and a higher penalty is assessed.

#### Failure to Retain Records

The regulation for rule-authorized wells at 40 C.F.R. § 144.28(i) and for permitted wells at § 144.51(j)(2), requires owners/operators to retain information about well monitoring, calibration records for either well gauges or strip charts and fluid analyses, showing the nature and composition of all injected fluid.

The Respondent is required to retain all records, unless asked to provide them to the Region or, if the Respondent is given written authorization by USEPA, to discard them after 3 years. Because well problems can develop over time, it is vital

that owners/operators retain all copies of the key monitoring records and other information, so that the history and operation of the well can be examined if problems occur. A factual and accurate paper trail helps the Regional and on-site experts make informed decisions about the well. Recordkeeping noncompliance is categorized as a less serious violation.

Failure to Submit a Transfer of Ownership

The rule for permitted wells at 40 C.F.R. § 144.38 describes two methods to properly transfer a well permit to a new owner or operator: (a) permit modification or (b) automatic transfer of the permit. Information needed for the permit modification may include the name of the new owner or operator and other data required under provisions of the SDWA.

For the automatic transfer method, Region 5 must receive 30 days prior notice by the transferor of the pending transfer of ownership, a copy of the written agreement between the parties, including the date of transfer, and evidence that the new owner or operator has adequate financial responsibility to plug and abandon the well, and the Director has not notified the existing permittee and the proposed new permittee of his or her intent to modify or revoke and reissue the permit. The rule at 40 C.F.R. § 144.28(1) requires the owner or operator of a rule-authorized Class I, II or III well, who has transferred ownership of the well to another owner or operator, to notify the Regional Administrator of such transfer at least 30 days in advance of the

transfer. Section 144.38(a) and (b) details transfer Section 144.38(a) requirements for permitted wells.

Operators are obligated to submit well transfer information promptly to Region 5 so that our well records can stay current and so we can ensure that all information required to complete the transfer, such as financial responsibility coverage, has been supplied to Region 5 for review and approval. In addition, proper well transfers also clarify which owner(s) is/are responsible for violations of the SDWA.

Failure to Prevent Movement into a USDW of Fluids that May Cause a Violation of MCLs

The rule at 40 C.F.R. § 144.12 prohibits an owner or operator of an injection well from constructing, maintaining, converting or plugging the well in a manner that allows any contaminant into an Underground Source of Drinking Water (USDW), if the presence of that contaminant may result in the violation of a primary drinking water standard, pursuant to 40 C.F.R.

§ 141. If such a violation is identified, the Water Division Director is authorized to prescribe corrective action, which may include additional construction, monitoring or reporting requirements.

Failure to Prohibit Movement of Fluid into an USDW

The rule at 40 C.F.R. § 144.28(f) for rule-authorized wells prohibits injection between the outermost casing and the well bore. The outermost casing is designed to protect the USDW from possible contamination. Any injection occurring between the

outermost casing and the well bore has the potential to contaminate USDWs. It is of the utmost importance that timely corrective action be taken promptly to halt fluid movement into an USDW to prevent its contamination.

Failure to Comply with an Administrative Order

Pursuant to Section 1423 of the SDWA, the Region is authorized to develop either civil or criminal actions or administrative orders. These criminal and civil actions will be filed or Administrative Orders will be issued against operators who fail to comply with UIC Program requirements.

Failure to Comply with Permit Conditions

The rule at 40 C.F.R. § 144.51(a) specifies that failure to comply with a permit condition can result in either enforcement action or permit denial, modification or revocation; and 40 C.F.R. § 144.51(e) also addresses improper operation of injection wells. This includes improper operation of the well, insufficient or inadequate funding or maintenance. Failure to comply with a permit condition can result in the contamination of USDWs.

Failure to Comply with a Compliance Schedule in a Permit

The rules at 40 C.F.R. § 144.53 and § 144.51(l)(5), outline what a compliance schedule is and how the well owner or operator should comply with the deadlines and time frames established in the schedule. Typically, these time frames do not exceed one year.

Respondent's failure to comply with the requirements contained in the schedule constitutes a permit violation,

resulting in this enforcement action. Owners and operators must comply with prescribed schedules to ensure that the well(s) is/are properly maintained and operating, and the environment is safeguarded.

Failure to Demonstrate Mechanical Integrity ("MI")

The rules at 40 C.F.R. § 146.8(a)(1) and (a)(2) state that a well has mechanical integrity if there is no significant leak in the casing, tubing or packer; and there is no significance movement into an USDW through vertical channels adjacent to the injection well bore.

The rule at 40 C.F.R. § 144.28 (a)(2)(iv)(A) states that the operator of rule-authorized wells shall demonstrate MI at least once every 5 years. The rule at 40 C.F.R. § 144.28(g)(2)(iv)(B) may require the owner or operator to demonstrate MI on a schedule established by the Regional Administrator. The rule at 40 C.F.R. § 144.51(q) requires a MI demonstration for permitted wells. Mechanical integrity is one of the cornerstones of an effective UIC program because it is the simplest and most appropriate method to show mechanical soundness of the well both in construction and operation and lack of migration of fluids to USDWs. A leak in the casing, tubing or packer of a well or any fluid movement adjacent to the wellbore, may cause contamination of an underground source of drinking water. Even if a well is not currently operating and is temporarily abandoned, the mechanical integrity must be demonstrated because the well may



function as a conduit for injected or formation fluids and has the potential to contaminate a USDW.

#### Failure to Submit Inventory

The rule at 40 C.F.R. § 144.26(e) required injection well owners or operators to submit well inventory information within 1 year after the effective date of the UIC program in the State. The UIC Program for the State of Michigan took effect on June 25, 1984. Therefore, injection well operators in Michigan were required to file inventory information on or before June 25, 1985 to qualify for rule authorization.

An accurate inventory of injection wells is vital for the operation of an effective UIC program. All existing injection wells need to be identified and reported to the Region, so that they can be properly tracked by UIC Program staff.

#### Nonsubmittal of Required Information

The rule at 40 C.F.R. § 144.17 authorizes the Regional Administrator to request information from owners or operators of rule-authorized or permitted wells to determine whether the wells may be endangering an underground source of drinking water, or are in compliance with requirements. This information may include, but is not limited to, ground water monitoring or an analysis of injected fluids.

Nonsubmittal of this information hinders Region 5's ability to make informed decisions about the environmental safety of an injection well. Failure to comply with an information request

will result in the termination of the rule-authorized status for the injection well.

#### Inspection and Entry

The rule at 40 C.F.R. § 144.51 requires owners or operators of permitted injection wells to provide access at reasonable hours to USEPA officials or their representatives at the well site or the facility where records are stored.

Refusal to provide access to either the well site or the building where the records are kept prohibits U.S. EPA representatives from determining compliance with UIC regulations, including regulations designed to protect USDWs.

#### Monitoring Reports

The rule at 40 C.F.R. § 144.28(h)(2)(i) requires that owners and operators of rule-authorized Class II wells must submit an annual report to USEPA, summarizing the results of monitoring the operation of the well, which is required by 40 C.F.R. § 144.28(g)(2). The rule at 40 C.F.R. § 144.51(1)(4) requires monitoring reports for permitted wells as specified in the permit.

Monitoring is required because major changes in volume and pressure of the fluid injected may be the first indication of malfunctions or leaks in the well below the surface, where problems cannot be seen. Furthermore, if monitoring is ignored by the operator, it prevents the owner/operator from detecting problems which could escalate if not fixed promptly.

By failing to submit the report, the owner/operator has not complied with a key UIC reporting requirement.

#### Financial Responsibility

The rule at 40 C.F.R. § 144.28(d), the owner or operator of a rule-authorized Class I, II or III well is required to maintain financial responsibility and resources to close, plug and abandon the underground injection well in a manner acceptable to a Regional Administrator of the USEPA. The rule at 40 C.F.R. § 144.52(a)(7) requires the same for permitted wells. The Regional Administrator may also require revised demonstration of financial responsibility to reflect inflation of such costs.

This safeguard is needed to discourage owners/operators from abandoning wells after use by not plugging them properly. If a well is not properly plugged, contamination of an underground source of drinking water could result. To demonstrate financial responsibility, an operator must establish a letter of credit, surety bond or similar instrument as proof that money exists to plug the well.

#### Failure to Plug a Well After Two Years of Cessation of Operation

The rule at 40 C.F.R. § 144.28(c)(2)(iv), requires the owner or operator of a rule-authorized Class I, II or III well to plug and abandon the well after two years of cessation of operation in accordance with an approved plan unless notice is provided to the Regional Administrator, describing satisfactory procedures that the owner or operator will take to ensure that the well will not endanger USDWs during the period of temporary abandonment (TA).

These procedures shall include compliance with technical requirements applicable to active injection wells unless waived by the Regional Administrator.

Pressure differences inside the wellbore may cause fluid to move into the wellbore and then up toward the surface, depending on the depth, pressure, and fluid characteristics. Under the right conditions, formation fluid or injection fluid could migrate upward into a USDW and contaminate it, unless the well is plugged properly. After many years, the additional fluids from an injection formation may corrode the casing or other equipment in the well and increase the possibility of leaks. Outside influences, such as waterflooding from nearby wells, could cause fluid to move horizontally to the wellbore then migrate vertically toward the surface or USDW, with the wellbore acting as a channel for the fluids to move through. Therefore, the failure to plug a well creates the potential of contaminating USDWs.

#### Failure to Submit Adequate Plugging and Abandonment Plan

Pursuant to 40 C.F.R. § 144.28(c), the owner or operator of a rule-authorized Class I, II, or III well is required to prepare, maintain, and comply with a plan for plugging and abandoning the well that meets the requirements of 40 C.F.R. § 146.10 and is acceptable to the Regional Administrator. The rule at 40 C.F.R. § 144.51 describes the same requirement for permitted wells.

These plans must indicate how wells will be plugged and also be protective of USDWs. The plans are reviewed by the USEPA to ensure compatibility with the casing and cementing of the well. An effective P & A is required to ensure that underground injection wells which are plugged and abandoned no longer pose a threat to USDWs.

#### Failure to Submit a Plugging And Abandonment Report

The rule at 40 C.F.R. § 144.28(k) states that the owner or operator of a rule-authorized Class I, II or III well is required to submit a report to the Regional Administrator concerning the plugging of a well no later than 60 days after the plugging occurs. The report must be certified by the person who did the plugging. The rule at § 144.51(o) describes the same requirements for permitted wells.

This report is important to ensure that the plugging and abandonment procedures were appropriate and the approved plugging and abandonment plan was followed. If not, corrective action should be taken to assure protection of USDWs.

#### Failure to Properly Case and Cement

The rule at 40 C.F.R. § 144.28(e) requires the owners and operators of Class II rule-authorized enhanced recovery and hydrocarbon storage wells to case and cement the wells to prevent movement of fluids into or between underground sources of drinking water. The adequate casing and cementing demonstrates a second aspect of mechanical integrity, i.e., prevention of fluid movement outside of casing for Class II wells. This is a serious

violation because the Respondent's failure could lead directly to contamination of a USDW.

Nonsubmittal of fluid analysis

The rule at 40 C.F.R. § 144.28(g)(2) requires owners and operators of rule-authorized Class II wells to monitor and 40 C.F.R. § 144.28(h)(2)(i) requires owners and operators of rule-authorized Class II wells to submit to U.S. EPA an analysis of the injected fluid within one year after the effective date of the program, and thereafter when changes are made to the fluid. The rule at 40 C.F.R. § 144.51(j) requires monitoring of injected fluids in permitted wells.

This reporting violation is significant because only fluids authorized by rule or permit can be injected. If fluid migrates into a USDW and contaminates drinking water, remediation or treatment could be better implemented when the fluid components are known. Specific gravity is used to determine the maximum injection pressure. An increase in the specific gravity means that the maximum injection pressure must decrease to prevent fracturing or illegal injection.

Failure to Submit Permit Application in a Timely Manner

The rules at 40 C.F.R. §§ 144.25(a)(4) and 144.31(c)(1) require the owner or operator of a rule-authorized salt water disposal injection well to submit a permit application to the U.S. EPA on a schedule established by the Regional Administrator, but, in any case, no later than June 25, 1988. A permit is essential to insure that U.S. EPA accurately tracks and monitors

well operation thereby insuring well compliance, with the goal of protecting USDWs.

Notice of Abandonment or Conversion

The rule at 40 C.F.R. § 144.28(j) requires the owner or operator of any rule-authorized Class I, II or III well to notify the Regional Administrator prior to the plugging and abandonment or conversion of the well.

Notice is required to review the procedure to ensure that it is adequate, to ensure that the plugging and abandonment plan is followed, and that there is an opportunity to witness the procedure. If the well is plugged poorly or improperly, corrective action would be required at considerable cost.

Construction of New Well Prior to Issuance of Permit

The rule at 40 C.F.R. §§ 144.11 and 144.31 requires the owner or operator to secure a permit for any well in which underground injection will take place, (unless that well is an existing Class II injection well authorized by rule.) All new Class II injection wells must obtain UIC permits. Section 144.11 prohibits the construction of any well required to have a permit until such permit has been issued.

Failure to comply with this requirement may result in the construction of a well which is not environmentally sound.

Failure to Report Within 24 Hours

The rule at 40 C.F.R. § 144.28(b) requires that the owner or operator of rule-authorized Class I, II and III wells report to U.S. EPA by telephone within 24 hours after the owner or operator

becomes aware of the circumstances of any noncompliance which may endanger health or the environment. This includes a review of monitoring reports showing injection of a contaminant which may endanger USDWs, or a malfunction of the injection system which may cause fluid migration into or between USDWs. The oral notification must be followed by a written submission within five (5) days after the owner or operator becomes aware of the circumstances.

U.S. EPA must be notified, whether or not an emergency situation exists, so that the Agency can respond either by monitoring the well repairs, or providing technical advice. Prompt reporting is very important and essential in preventing further contamination.

#### Failure to Report

The rule at 40 C.F.R. § 144.51(1) requires that owners of federally permitted UIC wells to notify the Agency as soon as possible about: (1) planned changes; (2) activity or changes at the permitted facility that may result in noncompliance; (3) transfers of well ownership; (4) monitoring reports (which should be submitted at the specified periods listed in the permit); (5) compliance schedules (compliance schedules must be submitted within 30 days of the scheduled date) and (6) 24-hour reporting.

This notice is required because Agency officials must have adequate opportunity to review and comment on proposed changes involving the well, and to make any necessary permit modifications. Owners and operators of injection wells must



communicate information about any planned well changes to Region 5 to ensure that our files stay current. This ensures that the Agency has the latest information, if an emergency arises.

**APPENDIX II**

For wells which are not in operation, the seriousness level for "failure to report" (see p.25 - 26 of Appendix I), shall be calculated as specified below:

FAILURE TO SUBMIT A  
ANNUAL REPORT ..... \$1,400 per year not submitted

FAILURE TO SUBMIT A  
QUARTERLY REPORT ..... \$450 per quarter not submitted

The above-mentioned violations are continuing violations.

**COMPLAINANT'S  
EXHIBIT 7**

Penalty Calculation						
Violator or Case Name		USEPA Permit #(s) or State Permit #(s)				
Mosaic		MI-133-3G-A002				
Enforcement Officer						Date
William Bates						September 14, 2006
Violation	Length of Violation		Duration			Administrative Max per month
	Start	End	Days	Months	Units	
Multiple wells in the Area Permit						
Failure to Demonstrate mechanical Integrity on 19 wells	7/17/2001	7/17/2006	1,826	60		\$11,000
			0	0		
			0	0		
Well #2:						
			0	0		
			0	0		
			0	0		
Well #3:						
			0	0		
			0	0		
			0	0		
			1,826	60	0	
Number of Wells in Violation					19	
Inflation Adjustment					1.19	
Calculating Economic Benefit						
Total Economic Benefit Components						\$16,977.00

Duration units counted in number of missing records.

If violatoin occurred prior to March 15, 2004 amounts should be \$5,500 (for Class II) or \$11,000 (all other Classes). If violation occurred after March 15, 2004 amounts should be \$6,500 (for Class Ib) or \$12,895 (all other Classes).

This number is calculated in the inflation Calculation table (page 2).

Input value between \$200-\$10000. This value is based upon the multiplier in the Seriousness of Violation for Proposed Penalty table (page 2).

Place negative numbers (-5 to -100) only. This value is used to only increase the penalty.

This is a % that is used only to decrease the penalty. It is based upon the company's ability to pay.

This is a % that is used to adjust penalty up or down by 50 to -50%.

This is % that is used in extraordinary circumstances. Reduces penalty by up to 20%

This value has been adjusted down to avoid exceeding the adminastrative maximum of \$157,500

PROPOSED PENALTY CALCULATION				
Well	Violation	Months	Units	Seriousness
19 wells	Failure to Demonstrate	60	0	\$2,009.00
		0	0	
		0	0	
		0	0	
		0	0	
		0	0	
		0	0	
		0	0	
		0	0	
Total (duration*seriousness)				\$120,540.00
Prior History				0%
Economic Impact				0%
Good Faith Effort				0%
Other				0%

### Reference Tables

Inflation Calculation						
Pen Adjust date	Date	Days		Total days	%	adjustment
1/31/97-3/15/04	7/17/2001	972	1/31/97-3/15/04	972	0.532	0.586
After 3/15/04	7/17/2006	854	After 3/15/04	854	0.468	0.603
1/31/97-3/15/04		0	<b>SUM</b>			<b>1.19</b>
After 3/15/04		0	<p>The Inflation calculation is based on the Debt Collection Improvement Act of 1996 and the minor amendment to Program Fraud Civil Remedies that took effect on March 15, 2004. Violations that occurred between January 30, 1997 and March 15, 2004 have an inflation adjustment of 10% above the fine amounts described in the act and in the penalty policies. If the violation occurred after March 14, 2004 the inflation factor was adjusted by an additional 17.23%. The table above calculations the amount of days in violation in each of these time periods, then adjusts the inflation calculation to reflect each contribution.</p> <p>The inflation calculation was done by determining the number of days of violation in each penalty adjustment period and dividing that number by the total number of days in violation. This was done to determine the percentage of time contributed by each penalty adjustment period. Each percentage was then multiplied by the percent increase for the appropriate inflation adjustment period to calculate the contribution of each inflation adjustment period to the total violation. These two inflation adjustment factors were then summed.</p>			
1/31/97-3/15/04		0				
After 3/15/04		0				
1/31/97-3/15/04		0				
After 3/15/04		0				
1/31/97-3/15/04		0				
After 3/15/04		0				
1/31/97-3/15/04		0				
After 3/15/04		0				
1/31/97-3/15/04		0				
After 3/15/04		0				
1/31/97-3/15/04		0				
After 3/15/04		0				
1/31/97-3/15/04		0				
After 3/15/04		0				

Seriousness of Violation for Proposed Penalty	
Violation Category	Multplier
<b>Level III</b>	<b>\$200-1000</b>
<i>Violations</i>	
Failure to retain records	
Failure to submit required information	
Failure to submit a report, complete report, timely report, and/or accurate report	
Failure to submit fluid analysis	
<b>Level II</b>	<b>\$500-1,500</b>
<i>Violations</i>	
Failure to demonstrate financial responsibility	
Failure to report within 24 hours	
Failure to provide written report of noncompliance	
Failure to provide access to site for inspection	
Failure to submit a plugging and abandonment plan	
Failure to apply for a permit	
Failure to submit an annual report	
Failure to transfer a permit property	
<b>Level I</b>	<b>\$1,000-10,000</b>
<i>Violations</i>	
Failure to demonstrate mechanical integrity resulting in potential or actual contamination of a USDW	
Unauthorized injection	
Failure to operate property (e.g. overpressure)	
Failure to prevent movement into a USDW of fluids that may cause a violation of an MCL	
Failure to comply with a compliance schedule in a permit	
Failure to comply with an Administrative Order	
Falsifying information	
Failure to construct a well properly (casing and cementing)	
Failure to plug and abandon in accordance with an approved plan	
Unauthorized plugging of a well in an unauthorized manner	

COMPLAINANT'S  
EXHIBIT 8

## BEN Calculation

To determine the economic benefit for failing to conduct part 2 of mechanical integrity on 19 wells, I used the BEN model. For the purposes of this summary part 2 of mechanical integrity is running a temperature log. All calculations were based on a delayed cost of running the temperature log. A cost estimate for running these logs is \$6,112 per well.. Mosaic, USA gave this estimated cost to USEPA after the filing of the Administrative Complaint.

In each model run a noncompliance date and a compliance date specific to each well was used. Below is a table documenting the noncompliance and compliance dates used for each well.

Well Number	Noncompliance date	Compliance date	Economic Benefit
1011	7/17/01	4/15/07	\$1,123.00
1012	7/17/01	4/15/07	\$1,123.00
1013	7/17/01	4/15/07	\$1,123.00
1014	7/17/01	4/15/07	\$1,123.00
1031	7/17/01	12/08/06	\$1,040.00
1032	10/14/01	4/15/07	\$990.00
1041	7/17/01	11/20/06	\$1,031.00
1042	7/17/01	12/14/06	\$1,045.00
1044	7/17/01	11/20/06	\$1,031.00
1051	7/17/01	1/25/07	\$1,075.00
1054	7/17/01	1/25/07	\$1,075.00
2031	7/17/01	11/02/06	\$1,015.00
2032	7/17/01	10/18/06	\$1,008.00
2041	11/30/05	10/31/06	\$214.00
2042	11/30/05	11/08/06	\$214.00
2061	7/17/01	11/09/06	\$1,021.00
2062	7/17/01	11/08/06	\$1,020.00
2081	5/13/03	12/13/06	\$353.00
2082	5/13/03	12/13/06	\$353.00
<b>Total</b>			<b>\$16,977.00</b>

<b>Run Name = 1011</b>	
<b>Present Values as of Noncompliance Date (NCD),</b>	<b>17-Jul-2001</b>
A) On-Time Capital & One-Time Costs	\$3,167
B) Delay Capital & One-Time Costs	\$2,470
C) Avoided Annually Recurring Costs	\$0
D) Initial Economic Benefit (A-B+C)	\$697
<b>E) Final Econ. Ben. at Penalty Payment Date,</b>	
<b>15-Jun-2007</b>	<b>\$1,123</b>
<i>C-Corporation w/ MI tax rates</i>	
Discount/Compound Rate	8.4%
Discount/Compound Rate Calculated By:	BEN
Compliance Date	15-Apr-2007
Capital Investment:	
Cost Estimate	\$0
Cost Estimate Date	N/A
Cost Index for Inflation	N/A
Consider Future Replacement (Useful Life)	N/A (N/A)
One-Time, Nondepreciable Expenditure:	
Cost Estimate	\$6,112
Cost Estimate Date	21-Dec-2006
Cost Index for Inflation	PCI
Tax Deductible?	Y
Annually Recurring Costs:	
Cost Estimate	\$0
Cost Estimate Date	N/A
Cost Index for Inflation	N/A
User-Customized Specific Cost Estimates:	N/A
On-Time Capital Investment	
Delay Capital Investment	
On-Time Nondepreciable Expenditure	
Delay Nondepreciable Expenditure	



<b>Run Name = 1012</b>	
<b>Present Values as of Noncompliance Date (NCD),</b>	<b>17-Jul-2001</b>
A) On-Time Capital & One-Time Costs	\$3,167
B) Delay Capital & One-Time Costs	\$2,470
C) Avoided Annually Recurring Costs	\$0
D) Initial Economic Benefit (A-B+C)	\$697
<b>E) Final Econ. Ben. at Penalty Payment Date,</b>	
<b>15-Jun-2007</b>	<b>\$1,123</b>
<b>C-Corporation w/ MI tax rates</b>	
Discount/Compound Rate	8.4%
Discount/Compound Rate Calculated By:	BEN
Compliance Date	15-Apr-2007
<b>Capital Investment:</b>	
Cost Estimate	\$0
Cost Estimate Date	N/A
Cost Index for Inflation	N/A
Consider Future Replacement (Useful Life)	N/A (N/A)
<b>One-Time, Nondepreciable Expenditure:</b>	
Cost Estimate	\$6,112
Cost Estimate Date	21-Dec-2006
Cost Index for Inflation	PCI
Tax Deductible?	y
<b>Annually Recurring Costs:</b>	
Cost Estimate	\$0
Cost Estimate Date	N/A
Cost Index for Inflation	N/A
<b>User-Customized Specific Cost Estimates:</b>	
On-Time Capital Investment	N/A
Delay Capital Investment	
On-Time Nondepreciable Expenditure	
Delay Nondepreciable Expenditure	

<b>Run Name = 1013</b>	
<b>Present Values as of Noncompliance Date (NCD),</b>	<b>17-Jul-2001</b>
A) On-Time Capital & One-Time Costs	\$3,167
B) Delay Capital & One-Time Costs	\$2,470
C) Avoided Annually Recurring Costs	\$0
D) Initial Economic Benefit (A-B+C)	\$697
<b>E) Final Econ. Ben. at Penalty Payment Date,</b>	
<b>15-Jun-2007</b>	<b>\$1,123</b>
<b>C-Corporation w/ MI tax rates</b>	
Discount/Compound Rate	8.4%
Discount/Compound Rate Calculated By:	BEN
Compliance Date	15-Apr-2007
<b>Capital Investment:</b>	
Cost Estimate	\$0
Cost Estimate Date	N/A
Cost Index for Inflation	N/A
Consider Future Replacement (Useful Life)	N/A (N/A)
<b>One-Time, Nondepreciable Expenditure:</b>	
Cost Estimate	\$6,112
Cost Estimate Date	21-Dec-2006
Cost Index for Inflation	PCI
Tax Deductible?	y
<b>Annually Recurring Costs:</b>	
Cost Estimate	\$0
Cost Estimate Date	N/A
Cost Index for Inflation	N/A
<b>User-Customized Specific Cost Estimates:</b>	<b>N/A</b>
On-Time Capital Investment	
Delay Capital Investment	
On-Time Nondepreciable Expenditure	
Delay Nondepreciable Expenditure	

<b>Run Name = 1014</b>	
<b>Present Values as of Noncompliance Date (NCD),</b>	<b>17-Jul-2001</b>
A) On-Time Capital & One-Time Costs	\$3,167
B) Delay Capital & One-Time Costs	\$2,470
C) Avoided Annually Recurring Costs	\$0
D) Initial Economic Benefit (A-B+C)	\$697
<b>E) Final Econ. Ben. at Penalty Payment Date,</b>	
<b>15-Jun-2007</b>	<b>\$1,123</b>
<b>C-Corporation w/ MI tax rates</b>	
Discount/Compound Rate	8.4%
Discount/Compound Rate Calculated By:	BEN
Compliance Date	15-Apr-2007
<b>Capital Investment:</b>	
Cost Estimate	\$0
Cost Estimate Date	N/A
Cost Index for Inflation	N/A
Consider Future Replacement (Useful Life)	N/A (N/A)
<b>One-Time, Nondepreciable Expenditure:</b>	
Cost Estimate	\$6,112
Cost Estimate Date	21-Dec-2006
Cost Index for Inflation	PCI
Tax Deductible?	Y
<b>Annually Recurring Costs:</b>	
Cost Estimate	\$0
Cost Estimate Date	N/A
Cost Index for Inflation	N/A
<b>User-Customized Specific Cost Estimates:</b>	
On-Time Capital Investment	N/A
Delay Capital Investment	
On-Time Nondepreciable Expenditure	
Delay Nondepreciable Expenditure	

<b>Run Name = 1031</b>	
Present Values as of Noncompliance Date (NCD),	17-Jul-2001
A) On-Time Capital & One-Time Costs	\$3,167
B) Delay Capital & One-Time Costs	\$2,522
C) Avoided Annually Recurring Costs	\$0
D) Initial Economic Benefit (A-B+C)	\$645
E) Final Econ. Ben. at Penalty Payment Date,	
15-Jun-2007	\$1,040
<i>C-Corporation w/ MI tax rates</i>	
Discount/Compound Rate	8.4%
Discount/Compound Rate Calculated By:	BEN
Compliance Date	08-Dec-2006
<b>Capital Investment:</b>	
Cost Estimate	\$0
Cost Estimate Date	N/A
Cost index for Inflation	N/A
Consider Future Replacement (Useful Life)	N/A (N/A)
<b>One-Time, Nondepreciable Expenditure:</b>	
Cost Estimate	\$6,112
Cost Estimate Date	21-Dec-2006
Cost index for Inflation	PCI
Tax Deductible?	Y
<b>Annually Recurring Costs:</b>	
Cost Estimate	\$0
Cost Estimate Date	N/A
Cost index for Inflation	N/A
<b>User-Customized Specific Cost Estimates:</b>	
On-Time Capital investment	
Delay Capital investment	
On-Time Nondepreciable Expenditure	
Delay Nondepreciable Expenditure	

<b>Run Name = 1032</b>	
<b>Present Values as of Noncompliance Date (NCD),</b>	<b>14-Oct-2001</b>
A) On-Time Capital & One-Time Costs	\$3,145
B) Delay Capital & One-Time Costs	\$2,519
C) Avoided Annually Recurring Costs	\$0
D) Initial Economic Benefit (A-B+C)	\$627
E) Final Econ. Ben. at Penalty Payment Date,	
<b>15-Jun-2007</b>	<b>\$990</b>
<b>C-Corporation w/ MI tax rates</b>	
Discount/Compound Rate	8.4%
Discount/Compound Rate Calculated By:	BEN
Compliance Date	15-Apr-2007
<b>Capital Investment:</b>	
Cost Estimate	\$0
Cost Estimate Date	N/A
Cost Index for Inflation	N/A
Consider Future Replacement (Useful Life)	N/A (N/A)
<b>One-Time, Nondepreciable Expenditure:</b>	
Cost Estimate	\$6,112
Cost Estimate Date	21-Dec-2006
Cost Index for Inflation	PCI
Tax Deductible?	y
<b>Annually Recurring Costs:</b>	
Cost Estimate	\$0
Cost Estimate Date	N/A
Cost Index for Inflation	N/A
<b>User-Customized Specific Cost Estimates:</b>	
On-Time Capital Investment	N/A
Delay Capital Investment	
On-Time Nondepreciable Expenditure	
Delay Nondepreciable Expenditure	

<b>Run Name = 1041</b>	
<b>Present Values as of Noncompliance Date (NCD),</b>	<b>17-Jul-2001</b>
A) On-Time Capital & One-Time Costs	\$3,167
B) Delay Capital & One-Time Costs	\$2,527
C) Avoided Annually Recurring Costs	\$0
D) Initial Economic Benefit (A-B+C)	\$640
<b>E) Final Econ. Ben. at Penalty Payment Date,</b>	
<b>15-Jun-2007</b>	<b>\$1,031</b>
<i>C-Corporation w/ MI tax rates</i>	
Discount/Compound Rate	8.4%
Discount/Compound Rate Calculated By:	BEN
Compliance Date	20-Nov-2006
<b>Capital Investment:</b>	
Cost Estimate	\$0
Cost Estimate Date	N/A
Cost Index for Inflation	N/A
Consider Future Replacement (Useful Life)	N/A (N/A)
<b>One-Time, Nondepreciable Expenditure:</b>	
Cost Estimate	\$6,112
Cost Estimate Date	21-Dec-2006
Cost Index for Inflation	PCI
Tax Deductible?	Y
<b>Annually Recurring Costs:</b>	
Cost Estimate	\$0
Cost Estimate Date	N/A
Cost Index for Inflation	N/A
<b>User-Customized Specific Cost Estimates:</b>	
On-Time Capital Investment	N/A
Delay Capital Investment	
On-Time Nondepreciable Expenditure	
Delay Nondepreciable Expenditure	

<b>Run Name = 1042</b>	
<b>Present Values as of Noncompliance Date (NCD),</b>	<b>17-Jul-2001</b>
A) On-Time Capital & One-Time Costs	\$3,167
B) Delay Capital & One-Time Costs	\$2,518
C) Avoided Annually Recurring Costs	\$0
D) Initial Economic Benefit (A-B+C)	\$649
<b>E) Final Econ. Ben. at Penalty Payment Date,</b>	
<b>15-Jun-2007</b>	<b>\$1,045</b>
<b>C-Corporation w/ MI tax rates</b>	
Discount/Compound Rate	8.4%
Discount/Compound Rate Calculated By:	BEN
Compliance Date	14-Dec-2006
<b>Capital Investment:</b>	
Cost Estimate	\$0
Cost Estimate Date	N/A
Cost Index for Inflation	N/A
Consider Future Replacement (Useful Life)	N/A (N/A)
<b>One-Time, Nondepreciable Expenditure:</b>	
Cost Estimate	\$6,112
Cost Estimate Date	21-Dec-2006
Cost Index for Inflation	PCI
Tax Deductible?	y
<b>Annually Recurring Costs:</b>	
Cost Estimate	\$0
Cost Estimate Date	N/A
Cost Index for Inflation	N/A
<b>User-Customized Specific Cost Estimates:</b>	
On-Time Capital Investment	N/A
Delay Capital Investment	
On-Time Nondepreciable Expenditure	
Delay Nondepreciable Expenditure	

<b>Run Name = 1044</b>	
<b>Present Values as of Noncompliance Date (NCD),</b>	<b>17-Jul-2001</b>
A) On-Time Capital & One-Time Costs	\$3,167
B) Delay Capital & One-Time Costs	\$2,527
C) Avoided Annually Recurring Costs	\$0
D) Initial Economic Benefit (A-B+C)	\$640
E) Final Econ. Ben. at Penalty Payment Date,	
<b>15-Jun-2007</b>	<b>\$1,031</b>
<b>C-Corporation w/ MI tax rates</b>	
Discount/Compound Rate	8.4%
Discount/Compound Rate Calculated By:	BEN
Compliance Date	20-Nov-2006
<b>Capital Investment:</b>	
Cost Estimate	\$0
Cost Estimate Date	N/A
Cost Index for Inflation	N/A
Consider Future Replacement (Useful Life)	N/A (N/A)
<b>One-Time, Nondepreciable Expenditure:</b>	
Cost Estimate	\$6,112
Cost Estimate Date	21-Dec-2006
Cost Index for Inflation	PCI
Tax Deductible?	y
<b>Annually Recurring Costs:</b>	
Cost Estimate	\$0
Cost Estimate Date	N/A
Cost Index for Inflation	N/A
<b>User-Customized Specific Cost Estimates:</b>	
On-Time Capital Investment	
Delay Capital Investment	
On-Time Nondepreciable Expenditure	
Delay Nondepreciable Expenditure	



<b>Run Name = 1051</b>	
Present Values as of Noncompliance Date (NCD),	17-Jul-2001
A) On-Time Capital & One-Time Costs	\$3,167
B) Delay Capital & One-Time Costs	\$2,500
C) Avoided Annually Recurring Costs	\$0
D) Initial Economic Benefit (A-B+C)	\$667
E) Final Econ. Ben. at Penalty Payment Date,	
<b>15-Jun-2007</b>	<b>\$1,075</b>
<i>C-Corporation w/ MI tax rates</i>	
Discount/Compound Rate	8.4%
Discount/Compound Rate Calculated By:	BEN
Compliance Date	25-Jan-2007
Capital Investment:	
Cost Estimate	\$0
Cost Estimate Date	N/A
Cost Index for Inflation	N/A
Consider Future Replacement (Useful Life)	N/A (N/A)
One-Time, Nondepreciable Expenditure:	
Cost Estimate	\$6,112
Cost Estimate Date	21-Dec-2006
Cost Index for Inflation	PCI
Tax Deductible?	y
Annually Recurring Costs:	
Cost Estimate	\$0
Cost Estimate Date	N/A
Cost Index for Inflation	N/A
User-Customized Specific Cost Estimates:	N/A
On-Time Capital Investment	
Delay Capital Investment	
On-Time Nondepreciable Expenditure	
Delay Nondepreciable Expenditure	

<b>Run Name = 1054</b>	
<b>Present Values as of Noncompliance Date (NCD),</b>	<b>17-Jul-2001</b>
A) On-Time Capital & One-Time Costs	\$3,167
B) Delay Capital & One-Time Costs	\$2,500
C) Avoided Annually Recurring Costs	\$0
D) Initial Economic Benefit (A-B+C)	\$667
E) Final Econ. Ben. at Penalty Payment Date,	
<b>15-Jun-2007</b>	<b>\$1,075</b>
<b>C-Corporation w/ MI tax rates</b>	
Discount/Compound Rate	8.4%
Discount/Compound Rate Calculated By:	BEN
Compliance Date	25-Jan-2007
<b>Capital Investment:</b>	
Cost Estimate	\$0
Cost Estimate Date	N/A
Cost Index for Inflation	N/A
Consider Future Replacement (Useful Life)	N/A (N/A)
<b>One-Time, Nondepreciable Expenditure:</b>	
Cost Estimate	\$6,112
Cost Estimate Date	21-Dec-2006
Cost Index for Inflation	PCI
Tax Deductible?	y
<b>Annually Recurring Costs:</b>	
Cost Estimate	\$0
Cost Estimate Date	N/A
Cost Index for Inflation	N/A
<b>User-Customized Specific Cost Estimates:</b>	
On-Time Capital Investment	N/A
Delay Capital Investment	
On-Time Nondepreciable Expenditure	
Delay Nondepreciable Expenditure	

<b>Run Name = 2031</b>	
<b>Present Values as of Noncompliance Date (NCD),</b>	<b>17-Jul-2001</b>
A) On-Time Capital & One-Time Costs	\$3,167
B) Delay Capital & One-Time Costs	\$2,537
C) Avoided Annually Recurring Costs	\$0
D) Initial Economic Benefit (A-B+C)	\$630
<b>E) Final Econ. Ben. at Penalty Payment Date,</b>	
<b>15-Jun-2007</b>	<b>\$1,015</b>
<b>C-Corporation w/ MI tax rates</b>	
Discount/Compound Rate	8.4%
Discount/Compound Rate Calculated By:	BEN
Compliance Date	02-Nov-2006
<b>Capital Investment:</b>	
Cost Estimate	\$0
Cost Estimate Date	N/A
Cost Index for Inflation	N/A
Consider Future Replacement (Useful Life)	N/A (N/A)
<b>One-Time, Nondepreciable Expenditure:</b>	
Cost Estimate	\$6,112
Cost Estimate Date	21-Dec-2006
Cost Index for Inflation	PCI
Tax Deductible?	y
<b>Annually Recurring Costs:</b>	
Cost Estimate	\$0
Cost Estimate Date	N/A
Cost Index for Inflation	N/A
<b>User-Customized Specific Cost Estimates:</b>	
On-Time Capital Investment	N/A
Delay Capital Investment	
On-Time Nondepreciable Expenditure	
Delay Nondepreciable Expenditure	

<b>Run Name =</b>	<b>2032</b>
<b>Present Values as of Noncompliance Date (NCD),</b>	<b>17-Jul-2001</b>
A) On-Time Capital & One-Time Costs	\$3,167
B) Delay Capital & One-Time Costs	\$2,542
C) Avoided Annually Recurring Costs	\$0
D) Initial Economic Benefit (A-B+C)	\$625
<b>E) Final Econ. Ben. at Penalty Payment Date,</b>	
<b>15-Jun-2007</b>	<b>\$1,008</b>
<i>C-Corporation w/ MI tax rates</i>	
Discount/Compound Rate	8.4%
Discount/Compound Rate Calculated By:	BEN
Compliance Date	18-Oct-2006
<b>Capital Investment:</b>	
Cost Estimate	\$0
Cost Estimate Date	N/A
Cost Index for Inflation	N/A
Consider Future Replacement (Useful Life)	N/A (N/A)
<b>One-Time, Nondepreciable Expenditure:</b>	
Cost Estimate	\$6,112
Cost Estimate Date	21-Dec-2006
Cost Index for Inflation	PCI
Tax Deductible?	Y
<b>Annually Recurring Costs:</b>	
Cost Estimate	\$0
Cost Estimate Date	N/A
Cost Index for Inflation	N/A
<b>User-Customized Specific Cost Estimates:</b>	<b>N/A</b>
On-Time Capital Investment	
Delay Capital Investment	
On-Time Nondepreciable Expenditure	
Delay Nondepreciable Expenditure	

<b>Run Name = 2041</b>	
Present Values as of Noncompliance Date (NCD),	30-Nov-2005
A) On-Time Capital & One-Time Costs	\$3,809
B) Delay Capital & One-Time Costs	\$3,619
C) Avoided Annually Recurring Costs	\$0
D) Initial Economic Benefit (A-B+C)	\$190
E) Final Econ. Ben. at Penalty Payment Date,	
15-Jun-2007	\$214
<i>C-Corporation w/ MI tax rates</i>	
Discount/Compound Rate	8.0%
Discount/Compound Rate Calculated By:	BEN
Compliance Date	31-Oct-2006
<u>Capital Investment:</u>	
Cost Estimate	\$0
Cost Estimate Date	N/A
Cost Index for Inflation	N/A
Consider Future Replacement (Useful Life)	N/A (N/A)
<u>One-Time, Nondepreciable Expenditure:</u>	
Cost Estimate	\$6,112
Cost Estimate Date	21-Dec-2006
Cost Index for Inflation	PCI
Tax Deductible?	y
<u>Annually Recurring Costs:</u>	
Cost Estimate	\$0
Cost Estimate Date	N/A
Cost Index for Inflation	N/A
<u>User-Customized Specific Cost Estimates:</u>	
On-Time Capital Investment	
Delay Capital Investment	
On-Time Nondepreciable Expenditure	
Delay Nondepreciable Expenditure	

<b>Run Name = 2042</b>	
<b>Present Values as of Noncompliance Date (NCD),</b>	<b>30-Nov-2005</b>
A) On-Time Capital & One-Time Costs	\$3,809
B) Delay Capital & One-Time Costs	\$3,619
C) Avoided Annually Recurring Costs	\$0
D) Initial Economic Benefit (A-B+C)	\$190
E) Final Econ. Ben. at Penalty Payment Date,	
<b>15-Jun-2007</b>	<b>\$214</b>
<b>C-Corporation w/ MI tax rates</b>	
Discount/Compound Rate	8.0%
Discount/Compound Rate Calculated By:	BEN
Compliance Date	08-Nov-2006
<b>Capital Investment:</b>	
Cost Estimate	\$0
Cost Estimate Date	N/A
Cost Index for Inflation	N/A
Consider Future Replacement (Useful Life)	N/A (N/A)
<b>One-Time, Nondepreciable Expenditure:</b>	
Cost Estimate	\$6,112
Cost Estimate Date	21-Dec-2006
Cost Index for Inflation	PCI
Tax Deductible?	y
<b>Annually Recurring Costs:</b>	
Cost Estimate	\$0
Cost Estimate Date	N/A
Cost Index for Inflation	N/A
<b>User-Customized Specific Cost Estimates:</b>	
On-Time Capital Investment	
Delay Capital Investment	
On-Time Nondepreciable Expenditure	
Delay Nondepreciable Expenditure	

<b>Run Name = 2061</b>	
<b>Present Values as of Noncompliance Date (NCD),</b>	<b>17-Jul-2001</b>
A) On-Time Capital & One-Time Costs	\$3,167
B) Delay Capital & One-Time Costs	\$2,533
C) Avoided Annually Recurring Costs	\$0
D) Initial Economic Benefit (A-B+C)	\$634
<b>E) Final Econ. Ben. at Penalty Payment Date,</b>	
<b>15-Jun-2007</b>	<b>\$1,021</b>
<b>C-Corporation w/ MI tax rates</b>	
Discount/Compound Rate	8.4%
Discount/Compound Rate Calculated By:	BEN
Compliance Date	09-Nov-2006
<b>Capital Investment:</b>	
Cost Estimate	\$0
Cost Estimate Date	N/A
Cost Index for Inflation	N/A
Consider Future Replacement (Useful Life)	N/A (N/A)
<b>One-Time, Nondepreciable Expenditure:</b>	
Cost Estimate	\$6,112
Cost Estimate Date	21-Dec-2006
Cost Index for Inflation	PCI
Tax Deductible?	Y
<b>Annually Recurring Costs:</b>	
Cost Estimate	\$0
Cost Estimate Date	N/A
Cost Index for Inflation	N/A
<b>User-Customized Specific Cost Estimates:</b>	<b>N/A</b>
On-Time Capital Investment	
Delay Capital Investment	
On-Time Nondepreciable Expenditure	
Delay Nondepreciable Expenditure	

<b>Run Name = 2062</b>	
Present Values as of Noncompliance Date (NCD),	17-Jul-2001
A) On-Time Capital & One-Time Costs	\$3,167
B) Delay Capital & One-Time Costs	\$2,534
C) Avoided Annually Recurring Costs	\$0
D) Initial Economic Benefit (A-B+C)	\$633
E) Final Econ. Ben. at Penalty Payment Date,	
15-Jun-2007	\$1,020
<i>C-Corporation w/ MI tax rates</i>	
Discount/Compound Rate	8.4%
Discount/Compound Rate Calculated By:	BEN
Compliance Date	08-Nov-2006
<b>Capital Investment:</b>	
Cost Estimate	\$0
Cost Estimate Date	N/A
Cost Index for Inflation	N/A
Consider Future Replacement (Useful Life)	N/A (N/A)
<b>One-Time, Nondepreciable Expenditure:</b>	
Cost Estimate	\$6,112
Cost Estimate Date	21-Dec-2006
Cost Index for Inflation	PCI
Tax Deductible?	y
<b>Annually Recurring Costs:</b>	
Cost Estimate	\$0
Cost Estimate Date	N/A
Cost Index for Inflation	N/A
<b>User-Customized Specific Cost Estimates:</b>	
On-Time Capital Investment	N/A
Delay Capital Investment	
On-Time Nondepreciable Expenditure	
Delay Nondepreciable Expenditure	



<b>Run Name = 2081</b>	
<b>Present Values as of Noncompliance Date (NCD),</b>	<b>13-May-2003</b>
A) On-Time Capital & One-Time Costs	\$3,225
B) Delay Capital & One-Time Costs	\$2,967
C) Avoided Annually Recurring Costs	\$0
D) Initial Economic Benefit (A-B+C)	\$259
<b>E) Final Econ. Ben. at Penalty Payment Date,</b>	
<b>15-Jun-2007</b>	<b>\$353</b>
<b>C-Corporation w/ MI tax rates</b>	
Discount/Compound Rate	7.9%
Discount/Compound Rate Calculated By:	BEN
Compliance Date	13-Dec-2006
<b>Capital Investment:</b>	
Cost Estimate	\$0
Cost Estimate Date	N/A
Cost Index for Inflation	N/A
Consider Future Replacement (Useful Life)	N/A (N/A)
<b>One-Time, Nondepreciable Expenditure:</b>	
Cost Estimate	\$6,112
Cost Estimate Date	21-Dec-2006
Cost Index for Inflation	PCI
Tax Deductible?	Y
<b>Annually Recurring Costs:</b>	
Cost Estimate	\$0
Cost Estimate Date	N/A
Cost Index for Inflation	N/A
<b>User-Customized Specific Cost Estimates:</b>	
On-Time Capital Investment	N/A
Delay Capital Investment	
On-Time Nondepreciable Expenditure	
Delay Nondepreciable Expenditure	

<b>Run Name = 2082</b>	
<b>Present Values as of Noncompliance Date (NCD),</b>	<b>13-May-2003</b>
A) On-Time Capital & One-Time Costs	\$3,225
B) Delay Capital & One-Time Costs	\$2,967
C) Avoided Annually Recurring Costs	\$0
D) Initial Economic Benefit (A-B+C)	\$259
<b>E) Final Econ. Ben. at Penalty Payment Date,</b>	
<b>15-Jun-2007</b>	<b>\$353</b>
<b>C-Corporation w/ MI tax rates</b>	
Discount/Compound Rate	7.9%
Discount/Compound Rate Calculated By:	BEN
Compliance Date	13-Dec-2006
<b>Capital Investment:</b>	
Cost Estimate	\$0
Cost Estimate Date	N/A
Cost Index for Inflation	N/A
Consider Future Replacement (Useful Life)	N/A (N/A)
<b>One-Time, Nondepreciable Expenditure:</b>	
Cost Estimate	\$6,112
Cost Estimate Date	21-Dec-2006
Cost Index for Inflation	PCI
Tax Deductible?	y
<b>Annually Recurring Costs:</b>	
Cost Estimate	\$0
Cost Estimate Date	N/A
Cost Index for Inflation	N/A
<b>User-Customized Specific Cost Estimates:</b>	
On-Time Capital Investment	
Delay Capital Investment	
On-Time Nondepreciable Expenditure	
Delay Nondepreciable Expenditure	

Penalty Calculation						
Violator or Case Name			USEPA Permit #(s) or State Permit #(s)			
Mosaic			MI-133-3G-A002			
Enforcement Officer			Date			
William Bates			September 14, 2006			
Calculating Statutory Maximum						
Violation	Length of Violation		Duration			Administrative Max per month
	Start	End	Days	Months	Units	
Multiple wells in the Area Permit						
Failure to Demonstrate mechanical integrity on 19 wells	7/17/2001	7/17/2006	1,826	60		\$11,000
			0	0		
			0	0		
Well #2:						
			0	0		
			0	0		
Well #3:						
			0	0		
			0	0		
			0	0		
			1,826	60	0	
Number of Wells in Violation						19
Inflation Adjustment						1.1866
Judicial Statutory Maximum						\$1,134,051,242.50
Administrative Statutory Maximum						\$157,500.00
Calculating Economic Benefit						
Total Economic Benefit Components						\$16,977.00

Duration units counted in number of missing records.

If violatoin occurred prior to March 15, 2004 amounts should be \$5,500 (for Class II) or \$11,000 (all other Classes). If violation occurred after March 15, 2004 amounts should be \$6,500 (for Class II) or \$12,895 (all other Classes).

This number is calculated in the inflation Calculation table (page 2).

This Judicial Maximum is calculated by multiplying together the days of violation, the number of wells, the inflation factor, and \$27,500. The \$27,500 is the base monetary amount per day of violation.

Input value between \$200-\$10000. This value is based upon the multiplier in the Seriousness of Violation for Proposed Penalty table (page 2).

Place negative numbers (-5 to -100) only. This value is used to only increase the penalty.

This is a % that is used only to decrease the penalty. It is based upon the company's ability to pay.

This is a % that is used to adjust penalty up or down by 50 to -50%.

This is % that is used in extraordinary circumstances. Reduces penalty by up to 20%

PROPOSED PENALTY CALCULATION				
Well	Violation	Months	Units	Seriousness
19 wells	Failure to Demonstrate mechanical integrity on 19 wells	60	0	\$2,009.00
		0	0	
		0	0	
		0	0	
		0	0	
		0	0	
		0	0	
		0	0	
		0	0	
Total (duration*seriousness)				\$120,540.00
Prior History				0%
Economic Impact				0%
Good Faith Effort				0%
Other				0%

### Reference Tables

Inflation Calculation						
Pen Adjust date	Date	Days		Total days	%	adjustment
1/31/97-3/15/04	7/17/2001	972	1/31/97-3/15/04	972	0.532311062	0.58554217
After 3/15/04	7/17/2008	854	After 3/15/04	854	0.467688938	0.60308488
1/31/97-3/15/04		0	The Inflation calculation is based on the Debt Collection Improvement Act of 1996 and the minor amendment to Program Fraud Civil Remedies that took effect on March 15, 2004. Violations that occurred between January 30, 1997 and March 15, 2004 have an inflation adjustment of 10% above the fine amounts described in the act and in the penalty policies. If the violation occurred after March 14, 2004 the inflation factor was adjusted by an additional 17.23%. The table above calculates the amount of days in violation in each of these time periods, then adjusts the inflation calculation to reflect each contribution.			
After 3/15/04		0				
1/31/97-3/15/04		0				
After 3/15/04		0				
1/31/97-3/15/04		0				
After 3/15/04		0				
1/31/97-3/15/04		0				
After 3/15/04		0				
1/31/97-3/15/04		0				
After 3/15/04		0				
1/31/97-3/15/04		0				
After 3/15/04		0				
1/31/97-3/15/04		0				
After 3/15/04		0				
1/31/97-3/15/04		0				
After 3/15/04		0				

Seriousness of Violation for Proposed Penalty	
Violation Category	Multiplier
<b>Level III</b>	<b>\$200-1000</b>
<i>Violations</i>	
Failure to retain records	
Failure to make required notifications	
Failure to submit a report, complete report, timely report, and/or accurate report	
Failure to submit inventory information in a timely fashion	
Failure to submit information	
<b>Level II</b>	<b>\$500-1,500</b>
<i>Violations</i>	
Failure to show evidence of or to maintain financial responsibility	
Failure to monitor	
Substantial failure to comply with operating requirements	
Failure to conduct an MIT upon lawful request to the Agency or within legal deadlines and	
Failure to submit a plugging and abandonment plan	
Failure to allow inspection and entry	
Failure to apply for a permit	
Failure to submit an annual report	
Failure to transfer a permit property	
Failure to submit 24-hour report and/or written follow-up	
Failure to submit information	
<b>Level I</b>	<b>\$1,000-10,000</b>
<i>Violations</i>	
Failure to demonstrate mechanical integrity resulting in potential or actual contamination of a	
Unauthorized injection	
Failure to operate properly (e.g. overpressure)	
Failure to prevent movement into a USOW of fluids that may cause a violation of an MCL	
Failure to comply with a compliance schedule in a permit	
Failure to comply with an Administrative Order	
Falsifying information	
Failure to construct a well properly (casing and cementing)	
Failure to plug and abandon in accordance with an approved plan	
Unauthorized plugging of a well in an unauthorized manner	

**COMPLAINANT'S  
EXHIBIT 9**

## invoice

## MICHIGAN WIRELINE SERVICES, INC.

P.O. Box 782  
MT. PLEASANT, MICHIGAN 48804-0782

(989) 772-5075

DATE

INVOICE #

11/24/2006

12564

## BILL TO:

MOSAIC POTASH  
1395 135 TH AVE  
HERSEY MI 49639

LOCATION  
1044 & 1041  
HERSEY PLANT  
OSCEOLA COUNTY  
MICHIGAN

NOV 27 2006

Post-It® Fax Note 7671

To Byron Taylor  
Co./Dept.  
Phone #  
Fax # (312) 853 7036

Net 30

## DESCRIPTION

## AMOUNT

TEMPERATURE/GAMMA RAY LOGS. PROJECT PRICE.

2

6,112.00

12,224.00

PO K37685

Please remit to above address.

TOTAL

\$12,224.00

COMPLAINANT'S  
EXHIBIT 10



5/27/97 - all attorneys

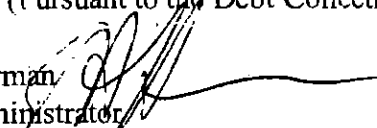
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

MAY - 9 1997

OFFICE OF  
ENFORCEMENT AND  
COMPLIANCE ASSURANCE

**MEMORANDUM**

SUBJECT: Modifications to EPA Penalty Policies to Implement the Civil Monetary Penalty Inflation Rule (Pursuant to the Debt Collection Improvement Act of 1996)

FROM: Steven A. Herman   
Assistant Administrator

TO: Regional Administrators

The Environmental Protection Agency ("EPA") published a new rule in the Federal Register -- 40 CFR Part 19, Adjustment of Civil Penalties for Inflation -- implementing the Debt Collection Improvement Act of 1996 ("DCIA"), on December 31, 1996. At the same time, we also published minor conforming amendments to 40 CFR Part 27, Program Fraud Civil Remedies. The rule took effect thirty days later on January 30, 1997. This means all violations occurring on or after January 31, 1997, are subject to the new inflation-adjusted penalty amounts.<sup>1</sup> We have attached a copy of the published rule, and the March 20, 1997, correction, for your convenience.

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<sup>1</sup> There are two sets of exceptions to the January 31, 1997, date for using adjusted penalty maximums. The first exceptions are for the four penalty provisions added or revised by the August 1996 amendments to the SDWA which have an effective date of August 6, 1996. Those penalty provisions were not subject to inflation adjustment. The applicable unadjusted maximums for those provisions are now included in the March 20, 1997, Table 1. These provisions are 42 U.S.C. 300g-3(g)(3)(B), 42 U.S.C. 300g-3(g)(3)(C), 42 U.S.C. 300i(b) and 42 U.S.C. 300j-6(b)(2). The second exception is for the recently identified amendment affecting TSCA, 15 U.S.C. 2615, through the Residential Lead-Based Paint Hazard Reduction Act of 1992 ("Lead Paint Act"), 42 U.S.C. 4852d. This portion of the Lead Paint Act and the corresponding regulations in 40 CFR Part 745, which are enforced through TSCA 15 U.S.C. 2615, were omitted from the December 31, 1996 rule-making. EPA anticipates performing a rule-making to adjust 42 U.S.C. 4852d, Part 745, and indirectly 15 U.S.C. 2615, within the next few months. The effective date for these penalty provisions will be thirty days following their adjustment and publication in the Federal Register.



This penalty policy memorandum modifies all of our existing civil penalty policies to conform to the DCIA and the new rule. This memorandum also provides guidance on how to plead penalties and how to determine the new maximum penalty amounts that may be sought in single administrative enforcement actions under the Clean Water Act ("CWA"), the Safe Drinking Water Act ("SDWA"), and the Clean Air Act ("CAA").

## OVERVIEW

The primary purpose of the DCIA is to restore the deterrent effect of civil statutory penalty provisions which have been eroded by inflation. In particular, the DCIA directed each federal agency to review its respective civil monetary penalty ("CMP") provisions and to issue a regulation adjusting them for inflation. The DCIA also requires periodic review and adjustment of the CMP's at least once every four years.

This first penalty inflation adjustment was limited by the DCIA to 10% above the existing statutory provision's maximum amount. For EPA, this meant all the penalty provision maximums, with the exception of a few new penalty provisions added by the 1996 SDWA amendments (which did not require any adjustment), have been adjusted upward by 10%.

The statutory penalty provisions and the new maximum penalty amounts are found in the attached Table 1 of 40 CFR 19.4 (as corrected on March 20, 1997). These increases in the CMPs apply only to violations which occur after the date the increases take effect on January 30, 1997 - that is, violations which occur on or after January 31, 1997.<sup>2</sup> For example, CWA Section 309 previously authorized judicial penalties of up to \$25,000 per day per violation; and now, since the new rule became effective, the new maximum penalty amount is \$27,500. Therefore, if a violation subject to CWA section 309(d) started on January 1, 1997, and continued through February 2, 1997, the maximum statutory penalty liability would consist of 30 days of violations at \$25,000 per day, plus 3 days of violation at \$27,500.

## PENALTY POLICY CALCULATION CHANGES

For the time being, we are not planning to amend the specific language, penalty matrices or formulas in any of our existing penalty policies based on the revised penalty maximums contained in 40 CFR Part 19. If a sufficient need to revise the particular provisions of one or more of the policies is identified, we will consider taking such action at a later time. We are, however, by this Policy, modifying all of our existing penalty policies, to increase the initial gravity component of the penalty calculation by 10% for those violations subject to the new

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<sup>2</sup> Supra note 1.

rule.<sup>3</sup> We believe this is consistent with the Congressional intent in passing the DCIA and is necessary to implement effectively the mandated penalty increases that we have set forth in 40 CFR Part 19. Accordingly, each penalty policy is now modified to apply the appropriate guidelines set forth below<sup>4</sup>. These new guidelines apply to all penalty policies, regardless of whether the policy is used for determining a specific amount to plead in a complaint or for determining a bottom-line settlement amount. (A complete list of all of our existing penalty policies is provided at the end of this memorandum.)<sup>5</sup>

A. If all of the violations in a particular case occurred before the effective date of the new rule, no changes in our penalty policies are necessary.

B. For those judicial and administrative cases in which some, but not all, of the violations occurred after the effective date of the new rule, the penalty policy calculations are modified by following these five steps:

1. Perform the economic benefit calculation for the entire period of the violation, going beyond the January 30, 1997, effective date of the new rule if appropriate.<sup>6</sup> Do not apply any mitigation or adjustment factors (such as, good faith, ability to pay, litigation considerations or supplemental environmental projects) at this point.
2. Apply the gravity component of the penalty policy in the standard way (without economic benefit which has been covered in step 1, above) for all violations to produce the gravity component value. Do not apply any mitigation or adjustment factors (such as good faith, self-audits, ability to pay, litigation considerations or supplemental environmental projects) at this point.

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<sup>3</sup> This ten percent increase should be used in virtually all cases. However, in some cases the Region, after consulting with the applicable OECA Division, may increase the gravity amount by less than 10% --- e.g., only 5 % -- if it believes the gravity amount prior to the inflation is already sufficiently high to fully account for the severity of the violations. For example, if all of the violations that occurred after the effective date were extremely minor, the Region may elect to inflate the gravity component for these violations by less than 10%.

<sup>4</sup> Where no specific penalty policy currently applies, follow the general penalty policies, which are also modified by this penalty policy. Likewise, all new penalty policies being prepared should take the inflation adjustment of statutory maximums into account.

<sup>5</sup> Whenever a copy of a particular penalty policy is provided to someone, a copy of this modifying policy should be provided as well.

<sup>6</sup> The calculation of economic benefit is not affected by the new rule. If there is no identifiable economic benefit component in a penalty policy, then all of the penalty is considered gravity for purposes herein.

3. Determine the percentage of the resulting gravity component value which occurred after the effective date of the penalty inflation adjustment, January 30, 1997. Multiply the post-effective date percentage by 0.10. Next, add 1 to the resulting value, and this will provide the gravity adjustment factor. For example, if approximately 40% of the violations in a case occurred on or after January 31, 1997, the gravity adjustment factor would be calculated as follows:  $[0.10 \times .40] + 1 = 1.040$  (the resulting gravity adjustment factor).

4. Multiply the gravity component from step 2 by the gravity adjustment factor from step 3. This produces a gravity component that has been adjusted based on the penalty inflation rule.

5. Add the subtotals from steps 1 and 4, above. Adjust the total, as appropriate pursuant to the applicable policy, for good faith, self-audits, ability to pay, litigation considerations, supplemental environmental projects, or other applicable mitigation factors.

C. If all the violations in a particular case occurred on or after the effective date of the new rule, the penalty policy calculation is modified by following these three steps:

1. Following the existing guidance, calculate the economic benefit covering the entire period of the violations. Do not apply any mitigation or adjustment factors (such as good faith, ability to pay, litigation considerations or supplemental environmental projects) at this point.

2. Apply the penalty policy in the standard way to calculate the gravity component (essentially everything except economic benefit, covered in step 1, above, is gravity). Do not apply any mitigation or adjustment factors (such as good faith, self-audits, ability to pay, litigation considerations or supplemental environmental projects) at this point. After this calculation has been completed, multiply it by 1.10. This produces a gravity amount increased by 10 % in accordance with the DCIA.

3. Add the adjusted gravity amount in step 2 to the economic benefit component. Adjust this sum, as appropriate, pursuant to the applicable policy for good faith, self-audits, ability to pay, litigation considerations, supplemental environmental projects or other applicable mitigation factors.

### PENALTY PLEADING

If all of the violations in a particular case occurred before the effective date of the new rule, no changes in our pleading practices are necessary. If some of the violations in a particular

case occurred after the effective date, then in judicial cases using "notice pleading" -- that is pleading "up to the statutory maximum amount" (and in any administrative cases which use notice pleading), the penalty amount pled should use the newly adjusted maximum amounts. For example, in a civil judicial complaint alleging violations of section 301 of the Clean Water Act, the prayer for relief would be written as follows:

Pursuant to Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), and 40 CFR Part 19, assess civil penalties against [name] not to exceed \$25,000 per day for each violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a), that occurred prior to January 31, 1997; and \$27,500 per day for each violation of Section 301 of the Act, 33 U.S.C. § 1311, that occurred on or after January 31, 1997, up to the date of judgment herein.

If all of the violations in a particular case occurred after the effective date of the new rule, then in judicial cases using "notice pleading" (and in any administrative cases which use notice pleading) the penalty amount pled should use the newly adjusted maximum amounts. For example, in a civil judicial complaint alleging violations of section 301 of the Clean Water Act, the prayer for relief would be written as follows:

Pursuant to Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), and 40 CFR Part 19, assess civil penalties against [name] not to exceed \$27,500 per day for each violation of Section 301 of the Act, 33 U.S.C. § 1311, up to the date of judgment herein.

#### ADMINISTRATIVE PENALTY CAPS FOR CWA, SDWA, AND CAA

The DCIA and 40 CFR Part 19 raised the maximum penalty amounts that may be sought for individual violations in administrative enforcement actions, as well as the total amounts that may be sought in a single administrative enforcement action. This increase is particularly relevant for administrative enforcement actions under the CWA, SDWA, and CAA which are limited by penalty maximums that may be sought in a single action, (commonly called "caps"). For example, prior to the DCIA and 40 CFR Part 19, CWA Class II administrative penalties were authorized up to \$10,000 per violation and not to exceed \$125,000 in a single administrative action; since the effective date of the new rule, the new penalty maximums are now \$11,000 and \$137,500, respectively. Similarly, Part 19 also raised the total penalty amounts that may be sought in a single administrative enforcement action under the CAA from \$200,000 to \$220,000 (although higher amounts may still be pursued with the joint approval of the Administrator and Attorney General).

The new penalty maximums/caps may be used only in a single administrative enforcement action under the CWA, SDWA, and CAA, provided the individual penalties for the post-effective date violations equal or exceed the previous unadjusted maximums (caps). In

other words, the penalties assessed can only exceed the old maximums/caps, up to the new maximums/caps, based solely on penalties for the new violations. For example, in a CWA Class II administrative enforcement complaint, there must have been at least 12 violations occurring after January 30, 1997, in order to exceed the previous maximum penalty of \$125,000 (12 violations X \$11,000 = \$132,000). If there are not at least 12 violations occurring after January 30, 1997, then the maximum amount which may be sought in a CWA Class II administrative enforcement action is still \$125,000.

As another example, in a CAA administrative enforcement action for violations of Section 203(a)(1) of the CAA, there must be at least eight violations that occurred after January 30, 1997, for the new \$220,000 maximum penalty cap to apply (8 violations X \$27,500 = 220,000). If there are not at least eight violations after January 30, 1997, then the maximum amount that may be sought in such a CAA administrative enforcement action is still \$200,000 (unless otherwise increased by joint agreement of the Administrator or Attorney General).

#### CHALLENGES IN THE COURSE OF ENFORCEMENT PROCEEDINGS

If a defendant should choose to challenge the validity of applying the adjusted penalty provisions on the grounds that EPA did not have the authority to promulgate the rule which adjusted the penalty maximums, please notify the Multimedia Enforcement Division of the challenge, so that OECA and the Region can coordinate our response before a response is filed. We expect our response to argue that the statutory penalties were raised by an Act of Congress, and, therefore, the Agency merely carried out a non-discretionary ministerial duty in publishing a rule identifying the specific provisions and applying the Congressional formula for the adjustment.

#### FURTHER INFORMATION

Any questions concerning the new rule and implementation can be directed to Steven Spiegel in the Multimedia Enforcement Division, our workgroup chair, via email, or to (703) 308-8507. Additionally, offices that identify penalty policies which may need individual modifications should send a memorandum via email to Steven Spiegel, specifying the policy and the suggested changes.

#### LIST OF EXISTING EPA CIVIL PENALTY POLICIES MODIFIED BY THIS MEMORANDUM

##### General

Policy on Civil Penalties (2/14/84)

A Framework for Statute-Specific Approaches to Penalty Assessments (2/14/84)  
Guidance on Use of Penalty Policies in Administrative Litigation, (12/15/95)

Clean Air Act - Stationary Sources

Clean Air Act Stationary Source Civil Penalty Policy (10/25/91) (This is a generic policy for stationary sources.)

Clarifications to the October 25, 1991 Clean Air Act Stationary Source Civil Penalty Policy (1/17/92)

There are a series of appendices that address certain specific subprograms within the stationary source program.

**Appendix I** - Permit Requirements for the Construction or Modification of Major Stationary Sources of Air Pollution (Not Dated)

**Appendix II** - Vinyl Chloride Civil Penalty Policy (Not Dated)

**Appendix III** - Asbestos Demolition and Renovation Civil Penalty Policy (Revised 5/5/92)

**Appendix IV** - Volatile Organic Compounds Where Reformulation of Low Solvent Technology is the Applicable Method of Compliance (Not Dated)

**Appendix V** - Air Civil Penalty Worksheet

**Appendix VI** - Volatile Hazardous Air Pollutant Civil Penalty Policy (Revised 3/2/88)

**Appendix VII** - Residential Wood Heaters (Not Dated)

**Appendix VIII** - Manufacture or Import of Controlled Substances in Amounts Exceeding Allowances Properly Held Under Protection of Stratospheric Ozone (11/24/89)

**Appendix IX** - Clean Air Act Civil Penalty Policy Applicable to Persons Who Perform Service for Consideration on a Motor Vehicle Air Conditioner Involving the Refrigerant or Who Sell Small Containers of Refrigerant in Violation of 40 CFR Part 82, Protection of Stratospheric Ozone, Subpart B (Not Dated)

**Appendix X** - Clean Air Act Civil Penalty Policy for Violations of 40 CFR Part 82, Subpart F: Maintenance, Service, Repair, and Disposal of Appliances Containing Refrigerant (6/1/94)

**Appendix XI** - Clean Air Act Civil Penalty Policy for Violations of 40 CFR Part 82, Subpart C: Ban on Nonessential Products Containing Class I Substances and Ban on Nonessential Products Containing or Manufactured with Class II Substances (Not Dated)

Clean Air Act - Mobile Sources

Volatility Civil Penalty Policy (12/1/89)

Civil Penalty Policy for Administrative Hearings (1/14/93)

Manufacturers Programs Branch Interim Penalty Policy (3/31/93)

Interim Diesel Civil Penalty Policy (2/8/94)

Tampering and Defeat Device Civil Penalty Policy for Notices of Violation (2/28/94)

Draft Reformulated Gasoline and Anti-Dumping Settlement Policy (6/3/96)

## TSCA

Guidelines for the Assessment of Civil Penalties Under Section 16 of TSCA (7/7/80)  
(Published in Federal Register of 9/10/80. Note that the first PCB penalty policy was published along with it, but the PCB policy is now obsolete.) This is a generic policy for TSCA sources. There are a series of policies that address certain specific subprograms within TSCA. They are as follows:

**Record keeping and Reporting Rules TSCA Sections 8, 12, and 13**

(8/5/96)

**PCB Penalty Policy (4/9/90)**

**TSCA Section 5 Enforcement Response Policy (6/8/89), amended (7/1/93)**

**TSCA Good Laboratory Practices Regulations Enforcement Policy (4/9/85)**

**TSCA Section 4 Test Rules (5/28/86)**

**TSCA Title II - Asbestos Hazard Emergency Response Act (AHERA)**

**Interim Final ERP for the Asbestos Hazard Emergency Response Act (1/31/89)**

**ERP for Asbestos Abatement Projects; Worker Protection Rule (11/14/89)**

## Safe Drinking Water Act - UIC

**Interim Final UIC Program Judicial and Administrative Order Settlement Penalty Policy -  
- Underground Injection Control Guidance No. 79 (9/27/93)**

## Safe Drinking Water Act - PWS

**New Public Water System Supervision Program Settlement Penalty Policy (5/25/94)**

## EPCRA

**Final Penalty Policy for Sections 302, 303, 304, 311, and 312 of EPCRA and Section 103 of CERCLA (6/13/90)**

**Enforcement Response Policy for Section 313 of EPCRA and Section 6607 of the Pollution Prevention Act (8/10/92); Low Volume Alternate Threshold ERP Revisions (12/18/96)**

## Clean Water Act

**Revised Interim Clean Water Act Settlement Penalty Policy, February 28, 1995  
Clean Water Act Section 404 Civil Administrative Penalty Actions Guidance on  
Calculating Settlement Amounts**

## RCRA

RCRA Civil Penalty Policy (October 1990)

UST

U.S. EPA Penalty Guidance for Violations of UST Regulations (November 1990)  
Guidance for Federal Field Citation Enforcement (OSWER Directive- No. 9610-16)  
(October 1993)

CERCLA

Final Penalty Policy for Sections 302, 303, 304, 311, and 312 of EPCRA and Section 103  
of CERCLA (6/13/90)

FIFRA

General FIFRA Enforcement Response Policy (7/2/90)  
FIFRA Section 7(c) ERP (2/10/86)  
Enforcement Response Policy for the Federal Insecticide, Fungicide and Rodenticide Act:  
Good Laboratory Practice (GLP) Regulations (9/30/91)

Attachments

cc: (w/attachments)  
OECA Office Directors  
ORE Division Directors  
OSRE Division Directors  
Regional Counsels, Regions I - X  
Director, Office of Environmental Stewardship, Region I  
Director, Division of Enforcement and Compliance Assurance, Region II  
Director, Compliance Assurance & Enforcement Division, Region VI  
Director, Office of Enforcement, Compliance & Environmental Justice, Region VIII  
Regional Enforcement Coordinators, Regions I - X  
Chief, EES, DOJ  
Deputy and Assistant Chiefs, EES, DOJ  
CMP Workgroup Members:  
Mike Northridge, OSRE  
Bob Ward, OGC-CCID  
Susan Dax, OCFO/OC/FMD  
Anthony Britten, OPPE  
David Drelich, ORE, WED  
Richard Ackerman, ORE-AED  
Jocelyn Adair, ORE-AED  
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Ann Pontius, OECA /OPPA  
Cary Secrest, ORE-AED  
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Lorie Schmidt, OGC-CCID  
Richard Witt, OGC-WD  
Robert Friedrich, OGC-IGD  
Lynn Johnson, OSWER/OPM/PARMS  
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Edie Goldman, Region 1 ORC  
Wilkey Sawyer, Region 2 ORC  
Judith Katz, Region 3  
Leif Palmer, Region 4 ORC  
Will Waisner, Region 4  
Evan L. Pearson, Region 6  
Alma Eaves, Region 7  
Kim Muratore, Region 9

# **Federal Register**

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Tuesday  
December 31, 1996

## **Part V**

### **Environmental Protection Agency**

**40 CFR Parts 19 and 27  
Civil Monetary Penalty Inflation  
Adjustment Rule; Final Rule**

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Parts 19 and 27****[FRL-5671-1]****Civil Monetary Penalty Inflation Adjustment Rule****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency ("EPA") is issuing this final Civil Monetary Penalty Inflation Adjustment Rule as mandated by the Debt Collection Improvement Act of 1996 to adjust EPA's civil monetary penalties ("CMPs") for inflation on a periodic basis. Prior to this new law, EPA's penalties had never been adjusted for inflation. This rule will allow EPA's penalties to keep pace with inflation and thereby maintain the deterrent effect Congress intended when it originally specified penalties.

This first mandatory adjustment increases almost all of EPA's penalty provisions by ten percent (except for new penalty provisions enacted into law in 1996, which are not being increased). The Agency is required to review its penalties again at least once every four years thereafter and to adjust them as necessary for inflation according to a specified formula.

**EFFECTIVE DATE:** January 30, 1997.**FOR FURTHER INFORMATION CONTACT:**

Steven M. Spiegel, Office of Regulatory Enforcement, Multimedia Enforcement Division, Mail Code 2248W, 401 M Street, SW, Washington, D.C. 20460, or at (703) 308-8507. Further information may also be requested by electronic mail (e-mail) to:

spiegel.steven@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note; Pub. L. 101-410, enacted October 5, 1990; 104 Stat. 890), as amended by the Debt Collection Improvement Act of 1996 (31 U.S.C. 3701 note; Public Law 104-134, enacted April 26, 1996; 110 Stat. 1321), ("DCIA"), each Federal agency is required to issue regulations adjusting for inflation the maximum civil monetary penalties that can be imposed pursuant to such agency's statutes. With the adoption of this rule implementing these statutes, all violations which take place after January 30, 1997 will be subject to the new statutory maximum civil penalty amounts.

With the exception of the new penalty provisions added by the 1996 amendments to the Safe Drinking Water Act, all of the statutory penalty provisions administered by EPA are being increased. All of these increases are for the maximum allowed, ten

percent. The affected penalty provisions and their statutory maximum amounts are set out in Table 1 of the new 40 CFR 19.4.

Section 5 of the DCIA sets forth the formula for adjusting the penalties for inflation:

The inflation adjustment described under section 4 shall be determined by increasing the maximum CMP or the range of minimum and maximum CMPs, as applicable, for each CMP by the cost-of-living adjustment. \* \* \* The term "cost-of-living" adjustment is the percentage for each CMP by which the Consumer Price Index (CPI) for the month of June of the calendar year preceding the adjustment, exceeds the Consumer Price Index for the month of June of the calendar year in which the amount of such CMP was last set or adjusted pursuant to law. Any increase determined under this amendment shall be rounded \* \* \*.

However, the DCIA also sets a ten percent cap on the first adjustment for inflation. Since EPA's penalties have never previously been adjusted for inflation, this first statutorily required adjustment will be limited to ten percent. Table A below sets forth each CMP provision which is being increased pursuant to the DCIA and the intermediate calculations performed to arrive at the adjusted final maximum penalty contained in the last column and in today's rule.

**TABLE A.—SUMMARY OF CIVIL MONETARY PENALTY INFLATION ADJUSTMENT CALCULATIONS**

U.S. Code citation	Civil monetary penalty description	Year penalty amount was last set by law	Maximum penalty amount set by law as of 10/23/96	Inflation factor calculation <sup>1</sup>	Maximum penalty increase amount after P.L. 101-410 rounding <sup>2</sup>	Maximum penalty amount after increase and P.L. 101-410 rounding	Maximum penalty amount after P.L. 101-410 rounding and 10% limit
7 U.S.C. 1361 (1) ...	FEDERAL INSECTICIDE, FUNGICIDE, & RODENTICIDE ACT CIVIL PENALTY—GENERAL—COMMERCIAL APPLICATORS, ETC.	1978	\$5,000 .....	456.7/195.3	\$7,000 .....	\$12,000 .....	\$5,500
7 U.S.C. 1361 (2) ...	FEDERAL INSECTICIDE, FUNGICIDE, & RODENTICIDE ACT CIVIL PENALTY—PRIVATE APPLICATORS—1ST & SUBSEQUENT OFFENSES OR VIOLATIONS.	1978	500/1,000 .....	456.7/195.3	700/1,000 .....	1,200/2,000 .....	550/1,100
15 U.S.C. 2615 .....	TOXIC SUBSTANCES CONTROL ACT CIVIL PENALTY.	1976	25,000 .....	456.7/170.1	40,000 .....	65,000 .....	27,500
15 U.S.C. 2647(a) ..	ASBESTOS HAZARD EMERGENCY RESPONSE ACT CIVIL PENALTY.	1986	5,000 .....	456.7/327.9	2,000 .....	7,000 .....	5,500
31 U.S.C. 3802(a)(1).	PROGRAM FRAUD CIVIL REMEDIES ACT/VIOLATION INVOLVING FALSE CLAIM.	1986	5,000 .....	456.7/327.9	2,000 .....	7,000 .....	5,500
31 U.S.C. 3802(a)(2).	PROGRAM FRAUD CIVIL REMEDIES ACT/VIOLATION INVOLVING FALSE STATEMENT.	1986	5,000 .....	456.7/327.9	2,000 .....	7,000 .....	5,500
33 U.S.C. 1319(d) ..	CLEAN WATER ACT VIOLATION/ CIVIL JUDICIAL PENALTY.	1987	25,000 .....	456.7/340.1	10,000 .....	35,000 .....	27,500
33 U.S.C. 1319(g)(2)(A).	CLEAN WATER ACT VIOLATION/ ADMINISTRATIVE PENALTY PER VIOLATION AND MAXIMUM.	1987	10,000/25,000 ..	456.7/340.1	3,000/10,000 ....	13,000/35,000 ..	11,000/27,500

TABLE A.—SUMMARY OF CIVIL MONETARY PENALTY INFLATION ADJUSTMENT CALCULATIONS—Continued

U.S. Code citation	Civil monetary penalty description	Year penalty amount was last set by law	Maximum penalty amount set by law as of 10/23/96	Inflation factor calculation <sup>1</sup>	Maximum penalty increase amount after P.L. 101-410 rounding <sup>2</sup>	Maximum penalty amount after increase and P.L. 101-410 rounding	Maximum penalty amount after P.L. 101-410 rounding and 10% limit
33 U.S.C. 1319(g)(2)(B).	CLEAN WATER ACT VIOLATION/ ADMINISTRATIVE PENALTY PER VIOLATION AND MAXIMUM.	1987	10,000/125,000	456.7/340.1	3,000/40,000	13,000/165,000	11,000/137,500
33 U.S.C. 1321(b)(6)(B)(i).	CLEAN WATER ACT VIOLATION/ ADMIN PENALTY OF SEC 311(b)(3) & (j) PER VIOLATION AND MAXIMUM.	1990	10,000/25,000	456.7/389.1	2,000/5,000	12,000/30,000	11,000/27,500
33 U.S.C. 1321(b)(6)(B)(ii).	CLEAN WATER ACT VIOLATION/ ADMIN PENALTY OF SEC 311(b)(3) & (j) PER VIOLATION AND MAXIMUM.	1990	10,000/125,000	456.7/389.1	2,000/20,000	12,000/145,000	11,000/137,500
33 U.S.C. 1321(b)(7)(A).	CLEAN WATER ACT VIOLATION/ CIVIL JUDICIAL PENALTY OF SEC 311(b)(3)—PER VIOLATION PER DAY OR PER BARREL OR UNIT.	1990	10,000 or 1,000 per b/u	456.7/389.1	5,000 or 200 per barrel/unit	15,000 or 1,200 per barrel/unit	11,000 or 1,100 per barrel or unit
33 U.S.C. 1321(b)(7)(B).	CLEAN WATER ACT VIOLATION/ CIVIL JUDICIAL PENALTY OF SEC 311 (c) & (e)(1)(B).	1990	25,000	456.7/389.1	5,000	30,000	27,500
33 U.S.C. 1321(b)(7) C).	CLEAN WATER ACT VIOLATION/ CIVIL JUDICIAL PENALTY OF SEC 311(j).	1990	25,000	456.7/389.1	5,000	30,000	27,500
33 U.S.C. 1321(b)(7)(D).	CLEAN WATER ACT VIOLATION/ MINIMUM CIVIL JUDICIAL PENALTY OF SEC 311(b)(3)—PER VIOLATION OR PER BARREL/UNIT.	1990	100,000 or 3,000 per b/u.	456.7/389.1	15,000 or 1,000 per b/u.	115,000 or 4,000 per barrel/unit	11,000 or 3,300 per barrel/unit
33 U.S.C. 1414b(d)	MARINE PROTECTION, RESEARCH AND SANCTUARIES ACT VIOL SEC 104b(d).	1988	600	456.7/353.5	200	800	660
33 U.S.C. 1415(a)	MARINE PROTECTION, RESEARCH AND SANCTUARIES ACT VIOLATIONS—FIRST & SUBSEQUENT VIOLATIONS.	1988	50,000/125,000	456.7/353.5	15,000/40,000	65,000/165,000	55,000/137,500
42 U.S.C. 300g-3(b).	SAFE DRINKING WATER ACT/ CIVIL JUDICIAL PENALTY OF SEC 1414(b).	1988	25,000	456.7/327.9	10,000	35,000	27,500
42 U.S.C. 300g-3(c)	SAFE DRINKING WATER ACT/ CIVIL JUDICIAL PENALTY OF SEC 1414(c).	1988	25,000	456.7/327.9	10,000	35,000	27,500
42 U.S.C. 300g-3(g)(3)(A).	SAFE DRINKING WATER ACT/ CIVIL JUDICIAL PENALTY OF SEC. 1414(g)(3)(A).	1988	25,000	456.7/327.9	10,000	35,000	27,500
42 U.S.C. 300g-3(g)(3)(B).	SAFE DRINKING WATER ACT/ MAXIMUM ADMINISTRATIVE PENALTY PER SEC. 1414(g)(3)(B).	1986	5,000	456.7/327.9	2,000	7,000	5,500
42 U.S.C. 300h-2(b)(1).	CIVIL JUDICIAL PENALTY/VIOLATIONS OF REQS—UNDERGROUND INJECTION CONTROL.	1986	25,000	456.7/327.9	10,000	35,000	27,500
42 U.S.C. 300h-2(c)(1).	CIVIL ADMINISTRATIVE PENALTY—VIOLATIONS OF REQS—UNDERGROUND INJECTION CONTROL—PER VIOLATION AND MAXIMUM.	1986	10,000/125,000	456.7/327.9	4,000/50,000	14,000/175,000	11,000/137,500
42 U.S.C. 300h-2(c)(2).	CIVIL ADMINISTRATIVE PENALTY—VIOLATIONS OF REQS—UNDERGROUND INJECTION CONTROL PER VIOLATION & MAXIMUM.	1986	5,000/125,000	456.7/327.9	2,000/50,000	7,000/175,000	5,500/137,500
42 U.S.C. 300h-3(c)(1).	VIOLATION/OPERATION OF NEW UNDERGROUND INJECTION WELL.	1974	5,000	456.7/146.9	11,000	16,000	5,500
42 U.S.C. 300h-3(c)(2).	WILLFUL VIOLATION/OPERATION OF NEW UNDERGROUND INJECTION WELL.	1974	10,000	456.7/146.9	21,000	31,000	11,000
42 U.S.C. 300i-1(b)	ATTEMPTING TO OR TAMPERING WITH PUBLIC WATER SYSTEM/CIVIL JUDICIAL PENALTY.	1986	20,000/50,000	456.7/327.9	10,000/20,000	30,000/70,000	22,000/55,000
42 U.S.C. 300j(e)(2)	FAILURE TO COMPLY W/ORDER ISSUED UNDER SEC. 1441(c)(1).	1974	2,500	456.7/146.9	5,000	7,500	2,750
42 U.S.C. 300j-4(c)	REFUSAL TO COMPLY WITH REQS OF SEC. 1445(a) OR (b).	1986	25,000	456.7/327.9	10,000	35,000	27,500

TABLE A.—SUMMARY OF CIVIL MONETARY PENALTY INFLATION ADJUSTMENT CALCULATIONS—Continued

U.S. Code citation	Civil monetary penalty description	Year penalty amount was last set by law	Maximum penalty amount set by law as of 10/23/96	Inflation factor calculation <sup>1</sup>	Maximum penalty increase amount after P.L. 101-410 rounding <sup>2</sup>	Maximum penalty amount after increase and P.L. 101-410 rounding	Maximum penalty amount after P.L. 101-410 rounding and 10% limit
42 U.S.C. 300j-23(d).	VIOLATIONS/SECTION 1463(b)—FIRST OFFENSE/REPEAT OFFENSE.	1988	5,000/50,000	456.7/353.5	1,000/15,000	6,000/65,000	5,500/55,000
42 U.S.C. 6928(a)(3).	RESOURCE CONSERVATION & RECOVERY ACT/VIOLATION SUBTITLE C ASSESSED PER ORDER.	1984	25,000	456.7/310.7	10,000	35,000	27,500
42 U.S.C. 6928(c)	RES. CONS. & REC. ACT/CONTINUED NONCOMPLIANCE OF COMPLIANCE ORDER.	1984	25,000	456.7/310.7	10,000	35,000	27,500
42 U.S.C. 6928(g)	RESOURCE CONSERVATION & RECOVERY ACT/VIOLATION SUBTITLE C.	1976	25,000	456.7/170.1	40,000	65,000	27,500
42 U.S.C. 6928(h)(2).	RES. CONS. & REC. ACT/NONCOMPLIANCE OF CORRECTIVE ACTION ORDER.	1984	25,000	456.7/310.7	10,000	35,000	27,500
42 U.S.C. 6934(e)	RES. CONS. & REC. ACT/NONCOMPLIANCE WITH SECTION 3013 ORDER.	1976	25,000	456.7/170.1	8,000	13,000	5,500
42 U.S.C. 6973(b)	RES. CONS. & REC. ACT/VIOLATIONS OF ADMINISTRATIVE ORDER.	1976	5,000	456.7/170.1	8,000	13,000	5,500
42 U.S.C. 6991e(a)(3).	RES. CONS. & REC. ACT/NONCOMPLIANCE WITH UST ADMIN. ORDER.	1984	25,000	456.7/310.7	10,000	35,000	27,500
42 U.S.C. 6991e(d)(1).	RES. CONS. & REC. ACT/FAILURE TO NOTIFY DR SUBMIT FALSE INFO.	1984	10,000	456.7/310.7	5,000	15,000	11,000
42 U.S.C. 6991e(d)(2).	VIOLATIONS OF SPECIFIED UST REGULATORY REQUIREMENTS.	1984	10,000	456.7/310.7	5,000	15,000	11,000
42 U.S.C. 6992(d)(2).	NONCOMPLIANCE W/MEDICAL WASTE TRACKING ACT ASSESSED THRU ADMIN ORDER.	1988	25,000	456.7/353.5	5,000	30,000	27,500
42 U.S.C. 6992d(a)(4).	NONCOMPLIANCE W/MEDICAL WASTE TRACKING ACT ADMIN ORDER.	1988	25,000	456.7/353.5	5,000	30,000	27,500
42 U.S.C. 6992d(d)	MEDICAL WASTE TRACKING ACT VIOLATIONS—JUDICIAL PENALTY.	1988	25,000	456.7/353.5	5,000	30,000	27,500
42 U.S.C. 7413(b)	CLEAN AIR ACT/VIOLATIONS/OWNERS & OPS OF STATIONARY AIR POLLUTION SOURCES—JUDICIAL PENALTIES.	1977	25,000	456.7/181.8	40,000	65,000	27,500
42 U.S.C. 7413(d)(1).	CLEAN AIR ACT/STATIONARY AIR POLLUTION SOURCES—ADMINISTRATIVE PENALTIES PER VIOLATION AND MAXIMUM.	1977	25,000/200,000	456.7/181.8	40,000/300,000	65,000/300,000	27,500/220,000
42 U.S.C. 7413(d)(3).	CLEAN AIR ACT/MINOR VIOLATIONS/STATIONARY AIR POLLUTION SOURCES—FIELD CITATIONS.	1990	5,000	456.7/389.1	1,000	6,000	5,500
42 U.S.C. 7524(a)	TAMPERING OR MANUFACTURE/SALE OF DEFEAT DEVICES IN VIOLATION OF 7522(a)(3)(A) OR (a)(3)(B)—BY PERSONS.	1977	2,500	456.7/181.8	2,000	6,500	2,750
42 U.S.C. 7524(a)	VIOLATION OF 7522 (a)(3)(A) OR (a)(3)(B)—BY MANUFACTURERS OR DEALERS; ALL VIOLATIONS OF 7522(a)(1), (2), (4), & (5) BY ANYONE.	1990	25,000	456.7/389.1	5,000	30,000	27,500
42 U.S.C. 7524(c)	ADMINISTRATIVE PENALTIES AS SET IN 7524(a) & 7545(d) WITH A MAXIMUM ADMINISTRATIVE PENALTY.	1990	200,000	456.7/389.1	30,000	230,000	220,000
42 U.S.C. 7545(d)	VIOLATIONS OF FUELS REGULATIONS.	1990	25,000	456.7/389.1	5,000	30,000	27,500
42 U.S.C. 9604(e)(5)(B).	SUPERFUND AMEND. & REAUTHORIZATION ACT/NONCOMPLIANCE W/REQUEST FOR INFO OR ACCESS.	1986	25,000	456.7/389.1	10,000	35,000	27,500
42 U.S.C. 9606(b)	SUPERFUND/WORK NDT PERFORMED W/IMMINENT, SUBSTANTIAL ENDANGERMENT.	1986	25,000	456.7/389.1	10,000	35,000	27,500

TABLE A—SUMMARY OF CIVIL MONETARY PENALTY INFLATION ADJUSTMENT CALCULATIONS—Continued

U.S. Code citation	Civil monetary penalty description	Year penalty amount was last set by law	Maximum penalty amount set by law as of 10/23/96	Inflation factor calculation <sup>1</sup>	Maximum penalty increase amount after P.L. 101-410 rounding <sup>2</sup>	Maximum penalty amount after increase and P.L. 101-410 rounding	Maximum penalty amount after P.L. 101-410 rounding and 10% limit
42 U.S.C. 9609(a) & (b).	SUPERFUND/ADMIN. PENALTY VIOLATIONS UNDER 42 U.S.C. SECT. 9603, 9608, OR 9622+.	1986	25,000	456.7/327.9	10,000	35,000	27,500
42 U.S.C. 9609(b)	SUPERFUND/ADMIN. PENALTY VIOLATIONS—SUBSEQUENT.	1986	75,000	456.7/327.9	30,000	105,000	82,500
42 U.S.C. 9609(c)	SUPERFUND/CIVIL JUDICIAL PENALTY/VIOLATIONS OF SECT. 9603, 9608, 9622.	1986	25,000	456.7/327.9	10,000	35,000	27,500
42 U.S.C. 9609(c)	SUPERFUND/CIVIL JUDICIAL PENALTY/SUBSEQUENT VIOLATIONS OF SECT. 9603, 9608, 9622.	1986	75,000	456.7/327.9	30,000	105,000	82,500
42 U.S.C. 11045(a) & (b) (1), (2) & (3).	EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT CLASS I & II ADMINISTRATIVE AND CIVIL PENALTIES.	1986	25,000	456.7/327.9	10,000	35,000	27,500
42 U.S.C. 11045(b) (2) & (3).	EPCRA CLASS I & II ADMINISTRATIVE AND CIVIL PENALTIES—SUBSEQUENT VIOLATIONS.	1986	75,000	456.7/327.9	30,000	105,000	82,500
42 U.S.C. 11045(c)(1).	EPCRA CIVIL AND ADMINISTRATIVE REPORTING PENALTIES FOR VIOLATIONS OF SECTIONS 11022 OR 11023.	1986	25,000	456.7/327.9	10,000	35,000	27,500
42 U.S.C. 11045(c)(2).	EPCRA CIVIL AND ADMINISTRATIVE REPORTING PENALTIES FOR VIOLATIONS OF SECTIONS 11021 OR 11043(b).	1986	10,000	456.7/327.9	4,000	14,000	11,000
42 U.S.C. 11045(d) (2) & (3).	EPCRA—FRIVOLOUS TRADE SECRET CLAIMS—CIVIL AND ADMINISTRATIVE PENALTIES.	1986	25,000	456.7/327.9	10,000	35,000	27,500

<sup>1</sup> The "inflation factor" is the result of dividing the June 1995 CPI by the CPI for June of the year the penalty was last set or adjusted.

<sup>2</sup> The penalties must be rounded after the inflation adjustment pursuant to Public Law 101-410 Sec. 5A.

Future adjustments also be made in accordance with the statutory formula. Since today's inflation adjustments are being made in December 1996, the next scheduled adjustment will cover inflation from June 1996 to June of the year in which the next adjustment is made. The DCIA requires that penalties be adjusted for inflation at least once every four years.

#### Procedural Requirements

##### I. Administrative Procedure Act

In accordance with 5 U.S.C. 553(b), the Administrative Procedure Act ("APA"), EPA generally publishes a rule in a proposed form and solicits public comment on it before issuing the rule in final. However, 5 U.S.C. 553(b)(3)(B), of the APA provides an exception to the public comment requirement if the agency finds good cause to omit advance notice and public participation. Good cause is shown when public comment is "impracticable, unnecessary, or contrary to the public interest".

Accordingly, EPA finds that providing an opportunity for public comment prior to publication of this rule is not necessary because EPA is carrying out a ministerial, non-discretionary duty

specified in an Act of Congress. This rule incorporates requirements specifically set forth in the DCIA requiring EPA to issue a regulation implementing inflation adjustments for all its civil penalty provisions by October 23, 1996. The formula for the amount of the penalty adjustment is prescribed by Congress in the DCIA as well. Prior notice and opportunity to comment are therefore unnecessary in this case because these changes are not subject to the exercise of discretion by EPA. These technical changes, required by law, do not substantively alter the existing regulatory framework nor in any way affect the terms under which civil penalties are assessed by EPA.

##### II. Small Business Regulatory Enforcement Fairness Act

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"), EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in today's Federal Register. This rule is a

not a "major rule" as defined by 5 U.S.C. 804(a).

##### III. Executive Order 12866-Regulatory Review

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)), the Agency must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget ("OMB") review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

- (1) have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

EPA has determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

#### IV. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 ("UMRA"), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments and the private sector. Under sections 201, 202 and 205 of the UMRA, EPA generally must assess effects and prepare a written statement of economic and regulatory alternatives analyses for proposed and final rules with Federal mandates, as defined by the UMRA, that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year.

UMRA Section 201 excepts agencies from assessing effects on State, local or tribal governments or the private sector of rules that incorporate requirements specifically set forth in law. Since this rule incorporates requirements specifically set forth in the DCIA, EPA is not required to assess its regulatory effects under Section 201. Further, the section 202 and 205 requirements do not apply to today's action because they apply only to rules for which a general notice of proposed rulemaking is published, and such notice was not published for this rule since it was not required based on the finding of good cause contained in Section I above. Additionally, today's action contains no Federal mandates for State, local or tribal governments or for the private sector because it does not impose any enforceable duties on these entities.

In addition, even if the assessment requirements of UMRA Title II otherwise applied to this rule, the requirements of section 203 of UMRA (requiring EPA to develop a small government agency plan before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments) would not apply here. This rule contains no regulatory

requirements that might significantly or uniquely affect small governments because the prescribed inflation adjustments do not change a small government's regulatory obligations. Additionally, this rule will have a similar effect on all individuals and entities subject to civil monetary penalties.

#### V. Regulatory Flexibility Act

In accordance with 5 U.S.C. 603, the Agency has determined that the regulation being issued today is not subject to the Regulatory Flexibility Act ("RFA"), which generally requires an agency to conduct a regulatory flexibility analysis of any significant impact the rule will have on a substantial number of small entities. By its terms, the RFA applies only to rules subject to notice-and-comment rulemaking requirements under the APA or any other statute. Today's rule is not subject to notice and comment requirements under the APA or any other statute because it is exempted. As discussed in Section I, while the rule is subject to the APA, the Agency has invoked the "good cause" exemption from the APA notice and comment requirements.

The Agency nonetheless has assessed the potential of this rule to adversely impact small entities. This rule contains no regulatory requirements that might significantly or uniquely affect small entities because the prescribed inflation adjustments have similar effect on all entities subject to civil monetary penalties and does not substantively alter the existing regulatory framework.

#### VI. Paperwork Reduction Act

This action contains no reporting or record keeping requirements for any non-federal persons or entities and consequently is not subject to the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

#### List of Subjects

##### 40 CFR Part 19

Environmental protection,  
Administrative practice and procedure,  
Penalties.

#### 40 CFR Part 27

Administrative practice and procedure, Assessments, False claims, False statements, Penalties.

Dated: December 20, 1996.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended by adding a new part 19 as follows:

1. By adding a new part 19 to read as follows:

#### PART 19—ADJUSTMENT OF CIVIL MONETARY PENALTIES FOR INFLATION

##### Sec.

19.1 Applicability.

19.2 Effective Date.

19.3 [Reserved].

19.4 Penalty Adjustment and Table.

Authority: Pub. L. 101-410, 104 Stat. 890, 28 U.S.C. 2461 note; Pub. L. 104-134, 110 Stat. 1321, 31 U.S.C. 3701 note.

#### PART 19—ADJUSTMENT OF CIVIL MONETARY PENALTIES FOR INFLATION

##### § 19.1 Applicability.

This part applies to each statutory provision under the laws administered by the Environmental Protection Agency concerning the maximum civil monetary penalty which may be assessed in either civil judicial or administrative proceedings.

##### § 19.2 Effective Date.

The increased penalty amounts set forth in this rule apply to all violations under the applicable statutes and regulations which occur after January 30, 1997.

##### § 19.3 [Reserved].

##### § 19.4 Penalty Adjustment and Table.

The adjusted statutory penalty provisions and their maximum applicable amounts are set out in Table 1. The last column in the table provides the newly effective maximum penalty amounts.

TABLE 1 OF SECTION 19.4.—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS

U.S. Code citation	Civil monetary penalty description	New maximum penalty amount
7 U.S.C. 136(1) .....	FEDERAL INSECTICIDE, FUNGICIDE, & RODENTICIDE ACT CIVIL PENALTY—GENERAL—COMMERCIAL APPLICATORS, ETC.	\$5,500
7 U.S.C. 136(2) .....	FEDERAL INSECTICIDE, FUNGICIDE, & RODENTICIDE ACT CIVIL PENALTY—PRIVATE APPLICATORS—FIRST AND SUBSEQUENT OFFENSES OR VIOLATIONS.	550/1,000
15 U.S.C. 2615 .....	TOXIC SUBSTANCES CONTROL ACT CIVIL PENALTY	27,500
15 U.S.C. 2647(a) .....	ASBESTOS HAZARD EMERGENCY RESPONSE ACT CIVIL PENALTY	5,500
31 U.S.C. 3802(a)(1) .....	PROGRAM FRAUD CIVIL REMEDIES ACT/VIOLATION INVOLVING FALSE CLAIM	5,500

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TABLE 1 OF SECTION 19.4.—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS—Continued

U.S. Code citation	Civil monetary penalty description	New maximum penalty amount
31 U.S.C. 3802(a)(2)	PROGRAM FRAUD CIVIL REMEDIES ACT/VIOLATION INVOLVING FALSE STATEMENT.	5,500
33 U.S.C. 1319(d)	CLEAN WATER ACT VIOLATION/CIVIL JUDICIAL PENALTY	27,500
33 U.S.C. 1319(g)(2)(A)	CLEAN WATER ACT VIOLATION/ADMINISTRATIVE PENALTY PER VIOLATION AND MAXIMUM.	11,000/27,500
33 U.S.C. 1319(g)(2)(B)	CLEAN WATER ACT VIOLATION/ADMINISTRATIVE PENALTY PER VIOLATION AND MAXIMUM.	11,000/137,500
33 U.S.C. 1321(b)(6)(B)(i)	CLEAN WATER ACT VIOLATION/ADMIN PENALTY OF SEC 311(B)(3)&(J) PER VIOLATION AND MAXIMUM.	11,000/27,500
33 U.S.C. 1321(b)(6)(B)(ii)	CLEAN WATER ACT VIOLATION/ADMIN PENALTY OF SEC 311(B)(3)&(J) PER VIOLATION AND MAXIMUM.	11,000/137,500
33 U.S.C. 1321(b)(7)(A)	CLEAN WATER ACT VIOLATION/CIVIL JUDICIAL PENALTY OF SEC 311(b)(3)—PER VIOLATION PER DAY OR PER BARREL OR UNIT.	11,000 or 1,100 per barrel or unit
33 U.S.C. 1321(b)(7)(B)	CLEAN WATER ACT VIOLATION/CIVIL JUDICIAL PENALTY OF SEC 311(c)&(e)(1)(B).	27,500
33 U.S.C. 1321(b)(7)(C)	CLEAN WATER ACT VIOLATION/CIVIL JUDICIAL PENALTY OF SEC 311(j)	27,500
33 U.S.C. 1321(b)(7)(D)	CLEAN WATER ACT VIOLATION/MINIMUM CIVIL JUDICIAL PENALTY OF SEC 311(b)(3)—PER VIOLATION OR PER BARREL/UNIT.	11,000 or 3,300 per barrel or unit
33 U.S.C. 1414b(d)	MARINE PROTECTION, RESEARCH & SANCTUARIES ACT VIOL SEC 1414b(d)	660
33 U.S.C. 1415(a)	MARINE PROTECTION, RESEARCH AND SANCTUARIES ACT VIOLATIONS—FIRST AND SUBSEQUENT VIOLATIONS.	55,000/137,500
42 U.S.C. 300g-3(b)	SAFE DRINKING WATER ACT/CIVIL JUDICIAL PENALTY OF SEC 1414(b)	27,500
42 U.S.C. 300g-3(c)	SAFE DRINKING WATER ACT/CIVIL JUDICIAL PENALTY OF SEC 1414(c)	27,500
42 U.S.C. 300g-3(g)(3)(A)	SAFE DRINKING WATER ACT/CIVIL JUDICIAL PENALTY OF SEC. 1414(g)(3)(a)	27,500
42 U.S.C. 300g-3(g)(3)(B)	SAFE DRINKING WATER ACT/MAXIMUM ADMINISTRATIVE PENALTY PER SEC. 1414(g)(3)(B).	5,500
42 U.S.C. 300h-2(b)(1)	CIVIL JUDICIAL PENALTY/VIOLATIONS OF REQS—UNDERGROUND INJECTION CONTROL (UIC).	27,500
42 U.S.C. 300h-2(c)(1)	CIVIL ADMIN PENALTY/VIOLATIONS OF UIC REQS—PER VIOLATION AND MAXIMUM.	11,000/137,500
42 U.S.C. 300h-2(c)(2)	CIVIL ADMIN PENALTY/VIOLATIONS OF UIC REQS—PER VIOLATION AND MAXIMUM.	11,000
42 U.S.C. 300h-3(c)(1)	VIOLATION/OPERATION OF NEW UNDERGROUND INJECTION WELL	5,500
42 U.S.C. 300h-3(c)(2)	WILLFUL VIOLATION/OPERATION OF NEW UNDERGROUND INJECTION WELL	11,000
42 U.S.C. 300f-1(b)	ATTEMPTING TO OR TAMPERING WITH PUBLIC WATER SYSTEM/CIVIL JUDICIAL PENALTY.	22,000/55,000
42 U.S.C. 300j(e)(2)	FAILURE TO COMPLY WORDER ISSUED UNDER SEC. 1441(b)(1)	2,750
42 U.S.C. 300j-4(c)	REFUSAL TO COMPLY WITH REQS. OF SEC. 1445(a) OR (b)	27,500
42 U.S.C. 300j-23(d)	VIOLATIONS/SECTION 1463(b)—FIRST OFFENSE/REPEAT OFFENSE	5,500/55,000
42 U.S.C. 6928(a)(3)	RESOURCE CONSERVATION & RECOVERY ACT/VIOLATION SUBTITLE C ASSESSED PER ORDER.	27,500
42 U.S.C. 6928(c)	RES. CONS. & REC. ACT/CONTINUED NONCOMPLIANCE OF COMPLIANCE ORDER.	27,500
42 U.S.C. 6928(g)	RESOURCE CONSERVATION & RECOVERY ACT/VIOLATION SUBTITLE C	27,500
42 U.S.C. 6928(h)(2)	RES. CONS. & REC. ACT/NONCOMPLIANCE OF CORRECTIVE ACTION ORDER	27,500
42 U.S.C. 6934(e)	RES. CONS. & REC. ACT/NONCOMPLIANCE WITH SECTION 3013 ORDER	5,500
42 U.S.C. 6973(b)	RES. CONS. & REC. ACT/VIOLATIONS OF ADMINISTRATIVE ORDER	5,500
42 U.S.C. 6991e(a)(3)	RES. CONS. & REC. ACT/NONCOMPLIANCE WITH UST ADMINISTRATIVE ORDER	27,500
42 U.S.C. 6991e(d)(1)	RES. CONS. & REC. ACT/FAILURE TO NOTIFY OR SUBMIT FALSE INFO	11,000
42 U.S.C. 6991e(d)(2)	VIOLATIONS OF SPECIFIED UST REGULATORY REQUIREMENTS	11,000
42 U.S.C. 6992d(a)(2)	NONCOMPLIANCE W/MEDICAL WASTE TRACKING ACT ASSESSED THRU ADMIN ORDER.	27,500
42 U.S.C. 6992d(a)(4)	NONCOMPLIANCE W/MEDICAL WASTE TRACKING ACT ADMINISTRATIVE ORDER.	27,500
42 U.S.C. 6992d(d)	VIOLATIONS OF MEDICAL WASTE TRACKING ACT—JUDICIAL PENALTIES	27,500
42 U.S.C. 7413(b)	CLEAN AIR ACT/VIOLATION/OWNERS & OPS OF STATIONARY AIR POLLUTION SOURCES—JUDICIAL PENALTIES.	27,500
42 U.S.C. 7413(d)(1)	CLEAN AIR ACT/VIOLATION/OWNERS & OPS OF STATIONARY AIR POLLUTION SOURCES—ADMINISTRATIVE PENALTIES PER VIOLATION & MAX.	27,500/220,000
42 U.S.C. 7413(d)(3)	CLEAN AIR ACT/MINOR VIOLATIONS/STATIONARY AIR POLLUTION SOURCES—FIELD CITATIONS.	5,500
42 U.S.C. 7524(a)	TAMPERING OR MANUFACTURE/SALE OF DEFEAT DEVICES IN VIOLATION OF 7522(a)(3)(A) OR (a)(3)(B)—BY PERSONS.	2,750
42 U.S.C. 7524(a)	VIOLATION OF 7522(a)(3)(A) OR (a)(3)(B)—BY MANUFACTURERS OR DEALERS; ALL VIOLATIONS OF 7522(a)(1), (2), (4), & (5) BY ANYONE.	27,500
42 U.S.C. 7524(c)	ADMINISTRATIVE PENALTIES AS SET IN 7524(a) & (7545(d) WITH A MAXIMUM ADMINISTRATIVE PENALTY.	220,000
42 U.S.C. 7545(d)	VIOLATIONS OF FUELS REGULATIONS	27,500
42 U.S.C. 9604(e)(5)(B)	SUPERFUND AMEND. & REAUTHORIZATION ACT/NONCOMPLIANCE W/REQUEST FOR INFO OR ACCESS.	27,500

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TABLE 1 OF SECTION 19.4.—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS—Continued

U.S. Code citation	Civil monetary penalty description	New maximum penalty amount
42 U.S.C. 9606(b) .....	<del>SUPERFUND/WORK NOT PERFORMED W/IMMINENT, SUBSTANTIAL ENDANGERMENT.</del>	<del>27,500</del>
42 U.S.C. 9609(a) & (b) .....	<del>SUPERFUND/ADMIN. PENALTY VIOLATIONS UNDER 42 U.S.C. SECT. 9603, 9608, OR 9622.</del>	<del>27,500</del>
42 U.S.C. 9609(b) .....	<del>SUPERFUND/ADMIN. PENALTY VIOLATIONS—SUBSEQUENT .....</del>	<del>82,500</del>
42 U.S.C. 9609(c) .....	<del>SUPERFUND/CIVIL JUDICIAL PENALTY/VIOLATIONS OF SECT. 9603, 9608, 9622</del>	<del>27,500</del>
42 U.S.C. 9609(c) .....	<del>SUPERFUND/CIVIL JUDICIAL PENALTY/SUBSEQUENT VIOLATIONS OF SECT. 9603, 9608, 9622.</del>	<del>82,500</del>
42 U.S.C. 11045(a) & (b)(1), (2) & (3) .....	<del>EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT CLASS I &amp; II ADMINISTRATIVE AND CIVIL PENALTIES.</del>	<del>27,500</del>
42 U.S.C. 11045(b) & (2)(3) .....	<del>EPCRA CLASS I &amp; II ADMINISTRATIVE AND CIVIL PENALTIES—SUBSEQUENT VIOLATIONS.</del>	<del>82,500</del>
42 U.S.C. 11045(c)(1) .....	<del>EPCRA CIVIL AND ADMINISTRATIVE REPORTING PENALTIES FOR VIOLATIONS OF SECTIONS 11022 OR 11023.</del>	<del>27,500</del>
42 U.S.C. 11045(c)(2) .....	<del>EPCRA CIVIL AND ADMINISTRATIVE REPORTING PENALTIES FOR VIOLATIONS OF SECTIONS 11021 OR 11043(b).</del>	<del>11,000</del>
42 U.S.C. 11045(d) & (2)(3) .....	<del>EPCRA—FRIVOLOUS TRADE SECRET CLAIMS—CIVIL AND ADMINISTRATIVE PENALTIES.</del>	<del>27,500</del>

**PART 27—[AMENDED]**

2. The authority citation for part 27 is revised to read as follows:

Authority: 31 U.S.C. 3801–3812; Pub. L. 101–410, 104 Stat. 890, 28 U.S.C. 2461 note; Pub. L. 104–134, 110 Stat. 1321, 31 U.S.C. 3701 note.

4. Section 27.3 is amended by revising paragraphs (a)(1) and (b)(1) to read as follows:

**§ 27.3 Basis for civil penalties and assessments.**

(a) *Claims.* (1) Except as provided in paragraph (c) of this section, any person who makes a claim that the person knows or has reason to know—

(i) Is false, fictitious, or fraudulent;

(ii) Includes or is supported by any written statement which asserts a material fact which is false, fictitious, or fraudulent;

(iii) Includes, or is supported by, any written statement that—

(A) Omits a material fact;

(B) Is false, fictitious, or fraudulent as a result of such omission; and

(C) Is a statement in which the person making such statement has a duty to include such material fact; or

(iv) Is for payment for the provision of property or services which the person has not provided as claimed, shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than \$5,500<sup>1</sup> for each such claim.

\* \* \* \* \*

(b) *Statements.* (1) Except as provided in paragraph (c) of this section, any person who makes a written statement that—

(i) The person knows or has reason to know—

(A) Asserts a material fact which is false, fictitious, or fraudulent; or

(B) Is false, fictitious, or fraudulent because it omits a material fact that the person making the statement has a duty to include in such statement; and

(ii) Contains, or is accompanied by, an express certification or affirmation of the truthfulness and accuracy of the contents of the statement, shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than \$5,500<sup>2</sup> for each such statement.

\* \* \* \* \*

[FR Doc. 96–32972 Filed 12–30–96; 8:45 am]

BILLING CODE 6560–50–P

<sup>1</sup> As adjusted in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, 104 Stat. 890), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134, 110 Stat. 1321).

<sup>2</sup> As adjusted in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, 104 Stat. 890), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134, 110 Stat. 1321).

Registered  
Federal Register

Thursday  
March 20, 1997

**Part VIII**

**Environmental  
Protection Agency**

40 CFR Parts 19 and 27  
Civil Monetary Penalty Inflation  
Adjustment Rule; Final Rule

Corrections

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Parts 19 and 27**

[FRL-5711-7]

**Civil Monetary Penalty Inflation Adjustment Rule****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Corrections To final rule.

**SUMMARY:** This document contains corrections to the Civil Monetary Penalty Inflation Adjustment Rule, final regulations (FRL-5671-1), which were published Tuesday, December 31, 1996, (61 FR 69359). The regulations adjusted the Environmental Protection Agency's ("EPA") civil monetary penalties ("CMPs") for inflation as mandated by the Debt Collection Improvement Act of 1996 ("DCIA"). A corrected version of Table 1, from 40 CFR 19.4, which now lists all but one of the EPA's civil monetary penalty authorities, appears near the end of this notice.

**EFFECTIVE DATE:** January 30, 1997.

**FOR FURTHER INFORMATION CONTACT:** For further information, contact Steven M. Spiegel, Office of Regulatory Enforcement, Multimedia Enforcement Division, Mail Code 2248W, 401 M Street, SW, Washington, D.C. 20460, or at (703) 308-8507. Further information may also be requested by electronic mail (e-mail) to: [spiegel.steven@epamail.epa.gov](mailto:spiegel.steven@epamail.epa.gov). The December 31, 1996 Final Rule and this Correction are also available on the Office of Enforcement and Compliance Assurance's Web page at <http://www.epa.gov/oeca>.

**SUPPLEMENTARY INFORMATION:****Need For Correction**

As published, the preamble and final regulations contain errors which may prove misleading and are in need of clarification. The changes made through these corrections are all technical in nature and can be broken down into three categories. First, there were five instances in which the exact section of a statute was not cited correctly in the preamble (which errors were repeated in the rule). Second, there were two errors in the new maximum penalty figures. Third, there are other minor non-substantive changes, as well as the addition of explanatory information which does not affect the original rule, but provides a more complete and understandable document and rule to the public. The additions concern the August 1996 amendments to the Safe Drinking Water Act, which went into

effect on August 6, 1996. For purposes of clarity and providing the public with one table that lists all of EPA's civil penalty authorities, the four new civil penalty provisions from the August 1996 amendments to the Safe Drinking Water Act have been added to Table 1 in Section 19.4 (even though these penalty provisions are not subject to adjustment for inflation pursuant to the DCIA at this time). These additions are identified below. Thus the revised Table 1 of Section 19.4 now provides a list of all but one of the applicable statutory provisions and maximum civil penalties. There is one statutory provision which has not yet been adjusted. EPA anticipates performing a rule-making to adjust 15 U.S.C. 2615, as amended by the Residential Lead-Based Paint Act of 1992, 42 U.S.C. 4852d, and the corresponding regulations in 40 CFR Part 745, which were omitted from the December 31, 1996 rule-making.

**Effect of Correction**

Since all of the corrections are technical in nature and do not affect the substance of the rule, the original effective date of January 30, 1997, applies to those corrected provisions, as well as to the other original provisions of the final rule which did not require correction. The identified corrections to Table A in the preamble correspond to the corrections and additions to Table 1 in Section 19.4. A corrected version of Table 1, 40 CFR 19.4, which now lists all but one of EPA's civil monetary penalty authorities, appears near the end of this notice.

**Correction of Publication**

Accordingly, the publication on December 31, 1996 of the preamble and final regulations (FRL-5671-1) which were the subject of F.R. Doc. 96-32972, are corrected and added to as follows:

**Preamble [Corrected]**

On page 69360, Table A.—Summary of Civil Monetary Penalty Inflation Adjustment Calculations, the first column, is corrected as follows:

7 USC 1361(1) is corrected to read 7 USC 1361.(a)(1)—(the number 136, is followed by the letter "I", not the number one).

7 USC 1361(2) is corrected to read 7 USC 1361.(a)(2)—(the number 136, is followed by the letter "I", not the number one).

15 USC 2615 is corrected to 15 USC 2615(a).

On page 69361, Table A, is corrected as follows:

33 U.S.C. 1321(b)(7)(A) in the first column is correct, but the fourth column figure of "10,000", is corrected to

"25,000". The seventh column figure of 15,000, is corrected to 30,000. The eighth column figure of "11,000" is corrected to "27,500".

33 U.S.C. 1321(b)(7)(D) in the first column is correct, but the eighth column figure of "11,000" is corrected to "110,000".

42 U.S.C. 300i-1(b) is corrected to 42 U.S.C. 300i-1(c).

On page 69362, for 42 U.S.C. 6934(e), the fourth column, the figure "25,000" is corrected to read "5,000".

On page 69363, 42 U.S.C.

11045(d)(2)(3) is corrected to 42 U.S.C. 11045(d)(1).

In the first column, first sentence, insert "will" so the sentence reads "Future adjustments also will be made in accordance with the statutory formula."

**Preamble [Additions]**

Supplementary Information. On page 69360, in the third column, in the first full sentence, add the phrase ", along with the new penalty amounts set by the 1996 amendments to the Safe Drinking Water Act," between the words "statutory maximum amounts" and "are set out in Table 1" - - -

On page 69361, 42 U.S.C. 300g-3(g)(3)(B), in the first column is correct; for the second column, change the word "penalty" to "penalties"; third column, replace "1986" with "1996"; fourth column, replace "5,000" with "5,000/25,000"; replace the figures in the fifth, sixth and seventh columns with "N/A"; and in the eighth column, replace "5,500" with "5,000/25,000".

Following 42 U.S.C. 300g-3(g)(3)(B), add a new row starting with 42 U.S.C. 300g-3(g)(3)(C) in the first column; for the second column, insert SAFE DRINKING WATER ACT/ THRESHOLD REQUIRING CIVIL JUDICIAL ACTION PER SEC. 1414(g)(3)(B) & (C); third column, insert "1996"; fourth column, insert "25,000"; insert "N/A" for the figures in the fifth, sixth and seventh columns; and in the eighth column, "25,000".

Following 42 U.S.C. 300h-3(c)2, add a new row for 42 U.S.C. 300i(b); for the second column, insert SAFE DRINKING WATER ACT/ FAILURE TO COMPLY WITH IMMINENT AND SUBSTANTIAL ENDANGERMENT ADMIN. ORDER; third column, insert "1996"; fourth column, insert "15,000"; insert "N/A" for the figures in the fifth, sixth and seventh columns; and in the eighth column, insert "15,000".

Following 42 U.S.C. 300j-4(c), add a new row for 42 U.S.C. 300j-6(b)(2); for the second column, insert SAFE DRINKING WATER ACT/ FAILURE TO COMPLY WITH ADMIN. ORDER

ISSUED TO FED. FACILITY; third column, insert "1996"; fourth column, insert "25,000"; insert "N/A" for the figures in the fifth, sixth and seventh columns; and in the eighth column, insert "25,000".

#### Procedural Requirements

##### *I. Small Business Regulatory Enforcement Fairness Act*

In the December 31, 1996 notice, EPA found good cause, pursuant to 5 U.S.C. 553(b)(3)(B) of the Administrative Procedure Act ("APA"), that soliciting public comment prior to publication of the rule was not necessary because EPA is carrying out a ministerial, non-discretionary duty per direction of an Act of Congress. EPA finds that good cause continues to apply to this rule, and therefore the effective date

provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"), do not govern the effective date of today's action as well. Additionally, the fact that these changes are technical and do not affect the substance of the previously issued rule also meets the "good cause" exception to the effective date requirements of section 553(d) of the Administrative Procedure Act as well.

Under Executive Order 12866 (58 F.R. 51735, October 4, 1993), this action is not a "significant regulatory action" and, is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (PL. 104-4). Because this action is not subject to notice-and-comment

requirements under the APA or any other statute, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

Under 5 U.S.C. 801(a)(1)(A), as added by SBREFA, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in today's Federal Register. This rule is a not a "major rule" as defined by 5 U.S.C. 804(a).

#### **PART 19 [CORRECTED WITH ADDITIONS]**

Beginning on page 69364, Table I of Section 19.4—Civil Monetary Penalty Inflation Adjustments, is corrected to read as follows:

TABLE 1 OF SECTION 19.4.—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS

U.S. Code citation	Civil monetary penalty description	New maximum penalty amount
7 U.S.C. 1361.(a)(1) .....	FEDERAL INSECTICIDE, FUNGICIDE, & RODENTICIDE ACT CIVIL PENALTY—GENERAL—COMMERCIAL APPLICATORS, ETC.	\$5,500.
7 U.S.C. 1361.(a)(2) .....	FEDERAL INSECTICIDE, FUNGICIDE, & RODENTICIDE ACT CIVIL PENALTY—PRIVATE APPLICATORS—FIRST AND SUBSEQUENT OFFENSES OR VIOLATIONS.	\$550/\$1,000.
15 U.S.C. 2615(a) .....	TOXIC SUBSTANCES CONTROL ACT CIVIL PENALTY .....	\$27,500.
15 U.S.C. 2647(a) .....	ASBESTOS HAZARD EMERGENCY RESPONSE ACT CIVIL PENALTY .....	\$5,500.
31 U.S.C. 3802(a)(1) .....	PROGRAM FRAUD CIVIL REMEDIES ACT/VIOLATION INVOLVING FALSE CLAIM.	\$5,500.
31 U.S.C. 3802(a)(2) .....	PROGRAM FRAUD CIVIL REMEDIES ACT/VIOLATION INVOLVING FALSE STATEMENT.	\$5,500.
33 U.S.C. 1319(d) .....	CLEAN WATER ACT VIOLATION/CIVIL JUDICIAL PENALTY .....	\$27,500.
33 U.S.C. 1319(g)(2)(A) .....	CLEAN WATER ACT VIOLATION/ADMINISTRATIVE PENALTY PER VIOLATION AND MAXIMUM.	\$11,000/\$27,500.
33 U.S.C. 1319(g)(2)(B) .....	CLEAN WATER ACT VIOLATION/ADMINISTRATIVE PENALTY PER VIOLATION AND MAXIMUM.	\$11,000/\$137,500.
33 U.S.C. 1321(b)(6)(B)(i) ..	CLEAN WATER ACT VIOLATION/ADMIN PENALTY OF SEC 311(b)(3)&(j) PER VIOLATION AND MAXIMUM.	\$11,000/\$27,500.
33 U.S.C. 1321(b)(6)(B)(ii) ..	CLEAN WATER ACT VIOLATION/ADMIN PENALTY OF SEC 311(b)(3)&(j) PER VIOLATION AND MAXIMUM.	\$11,000/\$137,500.
33 U.S.C. 1321(b)(7)(A) .....	CLEAN WATER ACT VIOLATION/CIVIL JUDICIAL PENALTY OF SEC 311(b)(3)—PER VIOLATION PER DAY OR PER BARREL OR UNIT.	\$27,500 or \$1,100 per barrel or unit.
33 U.S.C. 1321(b)(7)(B) .....	CLEAN WATER ACT VIOLATION/CIVIL JUDICIAL PENALTY OF SEC 311(c)&(e)(1)(B).	\$27,500.
33 U.S.C. 1321(b)(7)(C) .....	CLEAN WATER ACT VIOLATION/CIVIL JUDICIAL PENALTY OF SEC 311(j) .....	\$27,500.
33 U.S.C. 1321(b)(7)(D) .....	CLEAN WATER ACT VIOLATION/MINIMUM CIVIL JUDICIAL PENALTY OF SEC 311(b)(3)—PER VIOLATION OR PER BARREL/UNIT.	\$110,000 or \$3,300 per barrel or unit.
33 U.S.C. 1414b(d) .....	MARINE PROTECTION, RESEARCH & SANCTUARIES ACT VIOL SEC 104b(d) ..	\$660.
33 U.S.C. 1415(a) .....	MARINE PROTECTION RESEARCH AND SANCTUARIES ACT VIOLATIONS—FIRST & SUBSEQUENT VIOLATIONS.	\$55,000/\$137,500.
42 U.S.C. 300g-3(b) .....	SAFE DRINKING WATER ACT/CIVIL JUDICIAL PENALTY OF SEC 1414(b) .....	\$27,500.
42 U.S.C. 300g-3(c) .....	SAFE DRINKING WATER ACT/CIVIL JUDICIAL PENALTY OF SEC 1414(c) .....	\$27,500.
42 U.S.C. 300g-3(g)(3)(A) ..	SAFE DRINKING WATER ACT/CIVIL JUDICIAL PENALTY OF SEC 1414(g)(3)(a) ..	\$27,500.
42 U.S.C. 300g-3(g)(3)(B) ..	SAFE DRINKING WATER ACT/MAXIMUM ADMINISTRATIVE PENALTIES PER SEC 1414(g)(3)(B).	\$5,000/\$25,000.
42 U.S.C. 300g-3(g)(3)(C) ..	SAFE DRINKING WATER ACT/THRESHOLD REQUIRING CIVIL JUDICIAL ACTION PER SEC 1414(g)(3)(C).	\$25,000.
42 U.S.C. 300h-2(b)(1) .....	SDWA/CIVIL JUDICIAL PENALTY/VIOLATIONS OF REQS—UNDERGROUND INJECTION CONTROL (UIC).	\$27,500.
42 U.S.C. 300h-2(c)(1) .....	SDWA/CIVIL ADMIN PENALTY/VIOLATIONS OF UIC REQS—PER VIOLATION AND MAXIMUM.	\$11,000/\$137,500.
42 U.S.C. 300h-2(c)(2) .....	SDWA/CIVIL ADMIN PENALTY/VIOLATIONS OF UIC REQS—PER VIOLATION AND MAXIMUM.	\$5,500/\$137,500.
42 U.S.C. 300h-3(c)(1) .....	SDWA/VIOLATION/OPERATION OF NEW UNDERGROUND INJECTION WELL .....	\$5,500.
42 U.S.C. 300h-3(c)(2) .....	SDWA/WILLFUL VIOLATION/OPERATION OF NEW UNDERGROUND INJECTION WELL.	\$11,000.

TABLE 1 OF SECTION 19.4.—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS—Continued

U.S. Code citation	Civil monetary penalty description	New maximum penalty amount
42 U.S.C. 300i(b) .....	SDWA/FAILURE TO COMPLY WITH IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER.	\$15,000.
42 U.S.C. 300i-1(c) .....	SDWA/ATTEMPTING TO OR TAMPERING WITH PUBLIC WATER SYSTEM/CIVIL JUDICIAL PENALTY.	\$22,000/\$55,000.
42 U.S.C. 300j(e)(2) .....	SDWA/FAILURE TO COMPLY W/ORDER ISSUED UNDER SEC. 1441(c)(1) .....	\$2,750.
42 U.S.C. 300j-4(c) .....	SDWA/REFUSAL TO COMPLY WITH REQS. OF SEC. 1445(a) OR (b) .....	\$27,500.
42 U.S.C. 300j-6(b)(2) .....	SDWA/FAILURE TO COMPLY WITH ADMIN. ORDER ISSUED TO FEDERAL FACILITY.	\$25,000.
42 U.S.C. 300j-23(d) .....	SDWA/VIOLATIONS/SECTION 1463(b)—FIRST OFFENSE/REPEAT OFFENSE .....	\$5,500/\$55,000.
42 U.S.C. 6928(a)(3) .....	RESOURCE CONSERVATION & RECOVERY ACT/VIOLATION SUBTITLE C ASSESSED PER ORDER.	\$27,500.
42 U.S.C. 6928(c) .....	RES. CONS. & REC. ACT/CONTINUED NONCOMPLIANCE OF COMPLIANCE ORDER.	\$27,500.
42 U.S.C. 6928(g) .....	RESOURCE CONSERVATION & RECOVERY ACT/VIOLATION SUBTITLE C .....	\$27,500.
42 U.S.C. 6928(h)(2) .....	RES. CONS. & REC. ACT/NONCOMPLIANCE OF CORRECTIVE ACTION ORDER	\$27,500.
42 U.S.C. 6934(e) .....	RES. CONS. & REC. ACT/NONCOMPLIANCE WITH SECTION 3013 ORDER .....	\$5,500..
42 U.S.C. 6973(b) .....	RES. CONS. & REC. ACT/VIOLATIONS OF ADMINISTRATIVE ORDER .....	\$5,500.
42 U.S.C. 6991e(a)(3) .....	RES. CONS. & REC. ACT/NONCOMPLIANCE WITH UST ADMINISTRATIVE ORDER.	\$27,500.
42 U.S.C. 6991e(d)(1) .....	RES. CONS. & REC. ACT/FAILURE TO NOTIFY OR FOR SUBMITTING FALSE INFORMATION.	\$11,000.
42 U.S.C. 6991e(d)(2) .....	RCRA/VIOLATIONS OF SPECIFIED UST REGULATORY REQUIREMENTS .....	\$11,000.
42 U.S.C. 6992d(a)(2) .....	RCRA/NONCOMPLIANCE W/MEDICAL WASTE TRACKING ACT ASSESSED THRU ADMIN ORDER.	\$27,500.
42 U.S.C. 6992d(a)(4) .....	RCRA/NONCOMPLIANCE W/MEDICAL WASTE TRACKING ACT ADMINISTRATIVE ORDER.	\$27,500.
42 U.S.C. 6992d(d) .....	RCRA/VIOLATIONS OF MEDICAL WASTE TRACKING ACT—JUDICIAL PENALTIES.	\$27,500.
42 U.S.C. 7413(b) .....	CLEAN AIR ACT/VIOLATION OWNERS & OPERATORS OF STATIONARY AIR POLLUTION SOURCES—JUDICIAL PENALTIES.	\$27,500.
42 U.S.C. 7413(d)(1) .....	CLEAN AIR ACT/VIOLATION OWNERS & OPERATORS OF STATIONARY AIR POLLUTION SOURCES—ADMINISTRATIVE PENALTIES PER VIOLATION & MAX.	\$27,500/\$220,000.
42 U.S.C. 7413(d)(3) .....	CLEAN AIR ACT/MINOR VIOLATIONS/STATIONARY AIR POLLUTION SOURCES—FIELD CITATIONS.	\$5,500.
42 U.S.C. 7524(a) .....	TAMPERING OR MANUFACTURE/SALE OF DEFEAT DEVICES IN VIOLATION OF 7522(a)(3)(A) OR (a)(3)(B)—BY PERSONS.	\$2,750.
42 U.S.C. 7524(a) .....	VIOLATION OF 7522(a)(3)(A) OR (a)(3)(B)—BY MANUFACTURERS OR DEALERS; ALL VIOLATIONS OF 7522(a)(1), (2), (4), & (5) BY ANYONE.	\$27,500.
42 U.S.C. 7524(c) .....	ADMINISTRATIVE PENALTIES AS SET IN 7524(a) & 7545(d) WITH A MAXIMUM ADMINISTRATIVE PENALTY.	\$220,000.
42 U.S.C. 7545(d) .....	VIOLATIONS OF FUELS REGULATIONS .....	\$27,500.
42 U.S.C. 9604(e)(5)(B) .....	SUPERFUND AMEND. & REAUTHORIZATION ACT/NONCOMPLIANCE W/REQUEST FOR INFO OR ACCESS.	\$27,500.
42 U.S.C. 9606(b)(1) .....	SUPERFUND/WORK NOT PERFORMED W/IMMINENT, SUBSTANTIAL ENDANGERMENT.	\$27,500.
42 U.S.C. 9609 (a) & (b) ....	SUPERFUND/ADMIN. PENALTY VIOLATIONS UNDER 42 U.S.C. SECT. 9603, 9608, OR 9622.	\$27,500.
42 U.S.C. 9609(b) .....	SUPERFUND/ADMIN. PENALTY VIOLATIONS—SUBSEQUENT .....	\$82,500.
42 U.S.C. 9609(c) .....	SUPERFUND/CIVIL JUDICIAL PENALTY/VIOLATIONS OF SECT. 9603, 9608, 9622.	\$27,500.
42 U.S.C. 9609(c) .....	SUPERFUND/CIVIL JUDICIAL PENALTY/SUBSEQUENT VIOLATIONS OF SECT. 9603, 9608, 9622.	\$82,500.
42 U.S.C. 11045 (a) & (b) (1), (2) & (3).	EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT CLASS I & II ADMINISTRATIVE AND CIVIL PENALTIES.	\$27,500.
42 U.S.C. 11045(b) (2) & (3).	EPCRA CLASS I & II ADMINISTRATIVE AND CIVIL PENALTIES—SUBSEQUENT VIOLATIONS.	\$82,500.
42 U.S.C. 11045(c)(1) .....	EPCRA CIVIL AND ADMINISTRATIVE REPORTING PENALTIES FOR VIOLATIONS OF SECTIONS 11022 OR 11023.	\$27,500.
42 U.S.C. 11045(c)(2) .....	EPCRA CIVIL AND ADMINISTRATIVE REPORTING PENALTIES FOR VIOLATIONS OF SECTIONS 11021 OR 11043(b).	\$11,000.
42 U.S.C. 11045(d)(1) .....	EPCRA—FRIVOLOUS TRADE SECRET CLAIMS—CIVIL AND ADMINISTRATIVE PENALTIES.	\$27,500.

**PART 27—[CORRECTED]**

On page 69366, in the first column, the amendatory instruction identified as number "4" is corrected to "3".

Michael M. Stahl,

*Deputy Assistant Administrator, Office of  
Enforcement and Compliance Assurance.*

[FR Doc. 97-7069 Filed 3-19-97; 8:45 am]

BILLING CODE 6560-50-P

COMPLAINANT'S  
EXHIBIT 11



9/28/04 cy to all attorneys  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

SEP 21 2004

OFFICE OF  
ENFORCEMENT AND  
COMPLIANCE ASSURANCE

**MEMORANDUM**

**SUBJECT:** Modifications to EPA Penalty Policies to Implement the Civil Monetary Penalty Inflation Adjustment Rule (Pursuant to the Debt Collection Improvement Act of 1996, Effective October 1, 2004)

**FROM:** Thomas V. Skinner *TS*  
Acting Assistant Administrator

**TO:** Regional Administrators

This memorandum modifies all existing civil penalty policies to conform to a final rule that increased statutory penalties. This amendment to our civil penalty policies will take effect on October 1, 2004. This memorandum also provides guidance on how to plead penalties and determine the new maximum penalty amounts that may be sought in administrative enforcement actions. On February 13, 2004, the United States Environmental Protection Agency (EPA) promulgated a final rule in the *Federal Register*, codified at 40 C.F.R. Part 19, Adjustment of Civil Penalties for Inflation and implementing the Debt Collection Improvement Act of 1996 (DCIA). At the same time, EPA also published minor conforming amendments to 40 C.F.R. Part 27, Program Fraud Civil Remedies. The rule took effect on March 15, 2004. Consequently, all violations occurring after March 15, 2004, are subject to statutory penalties that have been adjusted for inflation. We have attached a copy of the published rule for your convenience.

**OVERVIEW**

The primary purpose of the DCIA is to preserve the deterrent effect of civil statutory penalty provisions by adjusting them for inflation. In particular, the DCIA directed each federal agency to review its respective civil monetary penalty (CMP) provisions and to issue a regulation adjusting them for inflation. The DCIA also requires periodic review and adjustment of the CMPs at least once every four years.

The DCIA limited the first penalty inflation adjustment, effective on January 30, 1997, to 10% above the existing statutory provision's maximum amount. For EPA, this meant all the penalty provision maximums, with the exception of a few new penalty provisions added by the 1996 Safe Drinking Water Act (SDWA) amendments, which did not require any adjustment, were adjusted upward by 10%. By memorandum dated May 9, 1997 (1997 Memorandum), EPA modified all penalty policies to conform to the DCIA and the 1997 penalty inflation adjustment.



The second penalty inflation adjustment, pursuant to 40 C.F.R. Part 19, Adjustment of Civil Penalties for Inflation, became effective March 15, 2004. The statutory penalty provisions and the new maximum penalty amounts are found in the attached Table 1 of 40 C.F.R. 19.4. These increases in the penalty provisions apply only to violations that occur after the date the increases take effect; that is, violations after March 15, 2004. For example, Clean Water Act (CWA) Section 309 previously authorized judicial penalties of up to \$27,500 per day per violation; since the new rule became effective, the new maximum penalty amount is \$32,500. Therefore, if a violation subject to CWA section 309(d) started on March 1, 2004, and lasted through March 16, 2004, the maximum statutory penalty liability would consist of 15 days of violations at \$27,500 per day, plus 1 day of violation at \$32,500.

## **PENALTY POLICY CALCULATION CHANGES**

By this memorandum, the Office of Enforcement and Compliance Assurance (OECA) modifies all existing penalty policies to increase the initial gravity component of the penalty calculation by 17.23 percent for those violations subject to the new rule. The inflation adjustment for the penalty provisions set forth in the rule was calculated by comparing the Consumer Price Index-Urban (CPI-U) for June 1996 with the CPI-U for June 2003. While not required by the DCIA, we believe this is consistent with the congressional intent in passing the DCIA and is necessary to effectively implement the mandated penalty increases set forth in 40 C.F.R. Part 19. Accordingly, each penalty policy is now modified to apply the appropriate guidelines set forth below. These new guidelines apply to all penalty policies, regardless of whether the policy is used for determining a specific amount to plead in a complaint or a bottom-line settlement amount. A complete list of all of our existing penalty policies is provided at the end of this memorandum.

A. If all of the violations in a particular case occurred on or before the effective date of the new rule, penalty policy calculations should be consistent with the 1997 Memorandum.

B. For those judicial and administrative cases in which some, but not all, of the violations occurred after the effective date of the new rule, the penalty policy calculations are modified by following these five steps:

1. Perform the economic benefit calculation for the entire period of the violation. Do not apply any mitigation or adjustment factors (such as good faith, ability to pay, or litigation considerations) at this point.
2. Apply the gravity component of the penalty policy in the standard way for all violations as follows. Do not apply any mitigation or adjustment factors at this point.
3. (a) For those penalty policies that were issued prior to January 31, 1997:  
Calculate the gravity component according to the penalty policy. For violations

that occurred on or after January 31, 1997, through March 15, 2004, multiply the gravity component by 1.1, reflecting the 10% increase. For violations that occurred after March 15, 2004, multiply the gravity component by 1.2895, reflecting both the 10% increase and the 17.23% increases [ $1.10 \times 1.1723 = 1.2895$ ]. For example, if 40% of the violations occurred on or after January 31, 1997, through March 15, 2004, the gravity adjustment factor for those violations would be calculated as follows: [ $1.1 \times .40 = .44$ ]. If 40% of the violations occurred after March 15, 2004, the gravity adjustment factor for those violations would be as follows: [ $1.2895 \times .40 = .52$ ].

(b) For those penalty policies that were issued or revised on or after January 31, 1997, through March 15, 2004: Calculate the gravity component according to the penalty policy. For violations that occurred on or after January 31, 1997, through March 15, 2004, use the gravity component set forth in the penalty policy, as the 10% increase is reflected in those policies. For violations that occurred after March 15, 2004, multiply the gravity component by 1.1723, reflecting the 17.23% increase. For example, if 40% of the violations occurred on or after January 31, 1997, through March 15, 2004, the gravity adjustment factor for those violations would be .40. If 40% of the violations occurred after March 15, 2004, the gravity adjustment factor for those violations would be as follows: [ $1.1723 \times .40 = .47$ ].

(c) Where all the violations in a particular case occurred after March 15, 2004: As discussed in subparagraphs (a) and (b) above, apply the penalty policy in the standard way to calculate the gravity component. Do not apply any mitigation or adjustment factors at this point. For those penalty policies that were issued to prior to January 31, 1997, multiply the gravity component by 1.2895, reflecting both the 10% increase and the 17.23% increase. For those penalty policies that were issued or revised after January 31, 1997, through March 15, 2004, multiply the gravity component by 1.1723, reflecting the 17.23% increase.

4. Add the economic benefit calculation and the total applicable gravity (the gravity-based penalty should be rounded to the nearest unit of 100) from above and adjust the total, as appropriate, pursuant to the mitigation factors in the applicable policy.

## **PENALTY PLEADING**

If all of the violations in a particular case occurred on or before the effective date of the new rule, the pleading practices set forth in the 1997 Memorandum should be applied. If some of the violations in a particular case occurred after the effective date, then any penalty amount pled should use the newly adjusted maximum amounts. For example, in a civil judicial complaint alleging violations of Section 301 of the Clean Water Act, the prayer for relief would be written as follows:

Pursuant to Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), and 40 C.F.R. Part 19, assess civil penalties against [name] not to exceed \$27,500 per day for each violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a), that occurred on or after January 31, 1997 through March 15, 2004; and \$32,500 per day for each violation of Section 301 of the Act, 33 U.S.C. § 1311, that occurred after March 15, 2004, up to the date of judgment herein.

If all of the violations in a particular case occurred after the effective date of the new rule, then any penalty amount pled should use the newly adjusted maximum amounts. For example, in a civil judicial complaint alleging violations of Section 301 of the Clean Water Act, the prayer for relief would be written as follows:

Pursuant to Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), and 40 C.F.R. Part 19, assess civil penalties against [name] not to exceed \$32,500 per day for each violation of Section 301 of the Act, 33 U.S.C. § 1311, up to the date of judgment herein.

### **ADMINISTRATIVE PENALTY CAPS FOR CWA, SDWA, AND CAA**

The Debt Collection Improvement Act and 40 C.F.R. Part 19 raised the maximum penalty amounts that may be sought for individual violations in administrative enforcement actions, as well as the total amounts that may be sought in one administrative enforcement action. This increase is particularly relevant for administrative enforcement actions under the CWA, SDWA, and CAA, which are limited by penalty maximums that may be sought in a single action (commonly called "caps")<sup>1</sup>. For example, prior to the DCIA and 40 C.F.R. Part 19, CWA Class II administrative penalties were authorized up to \$11,000 per violation and not to exceed \$137,500 in one administrative action; since the effective date of the new rule, the new penalty maximums are now \$11,000 and \$157,500, respectively. Similarly, Part 19 also raised the total penalty amounts that may be sought in a single administrative enforcement action under the CAA from \$220,000 to \$270,000 (although higher amounts may still be pursued with the joint approval of the Administrator and Attorney General). Note that the adjusted penalty caps apply if an action is filed or a complaint is amended after March 15, 2004, even if some or all of the violations occurred on or before March 15, 2004.

### **CHALLENGES IN THE COURSE OF ENFORCEMENT PROCEEDINGS**

If a defendant challenges the validity of applying the adjusted penalty provisions on the grounds that EPA did not have the authority to promulgate the rule that adjusted the penalty maximums, please notify the Special Litigation and Projects Division of the challenge, so that OECA and the Region can coordinate our response before a response is filed.

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<sup>1</sup> See CWA 33 U.S.C. § 309(g)(2)(A)-(B); CWA 33 U.S.C. § 311(b)(6)(B)(i)-(ii); SDWA 42 U.S.C. § 300g-3(g)(3)(B); SDWA 42 U.S.C. § 300h-2(c)(1)(B), (2)(B); CAA 42 U.S.C. § 113(d)(1); CAA 42 U.S.C. § 205(c).

## **FURTHER INFORMATION**

Any questions concerning the new rule and implementation can be directed to David Abdalla of ORE's Special Litigation and Projects Division at (202) 564-2413 or by email at [abdalla.david@epa.gov](mailto:abdalla.david@epa.gov).

## **LIST OF EXISTING EPA CIVIL PENALTY POLICIES MODIFIED BY THIS MEMORANDUM**

### **General**

Policy on Civil Penalties (2/14/84)  
A Framework for Statute-Specific Approaches to Penalty Assessments (2/14/84)  
Guidance on Use of Penalty Policies in Administrative Litigation (12/15/95)

### **Clean Air Act - Stationary Sources**

Clean Air Act Stationary Source Civil Penalty Policy (7/23/95) (This is a generic policy for stationary sources).  
Clarifications to the October 25, 1991 Clean Air Act Stationary Source Civil Penalty Policy (1/17/92)  
Combined Enforcement Policy for Section 112(r) Risk of the Clean Air Act [Risk Management Plan] (8/15/01)

There are a series of appendices that address certain specific subprograms within the stationary source program.

Appendix I - Permit Requirements for the Construction or Modification of Major Stationary Sources of Air Pollution (Not Dated)  
Clarification of the Use of Appendix I of the Clean Air Act Stationary Source Civil Penalty Policy (7/13/95)  
Appendix II - Vinyl Chloride Civil Penalty Policy (Not Dated)  
Appendix III - Asbestos Demolition and Renovation Civil Penalty Policy (Revised 5/5/92)  
Appendix IV - Volatile Organic Compounds Where Reformulation of Low Solvent Technology is the Applicable Method of Compliance (Not Dated)  
Appendix V - Air Civil Penalty Worksheet  
Appendix VI - Volatile Hazardous Air Pollutant Civil Penalty Policy (Revised 3/2/88)  
Appendix VII - Residential Wood Heaters (Not Dated)  
Appendix VIII - Manufacture or Import of Controlled Substances in Amounts Exceeding Allowances Properly Held Under Protection of Stratospheric Ozone (11/24/89)  
Appendix IX - Clean Air Act Civil Penalty Policy Applicable to Persons Who Perform Service for Consideration on a Motor Vehicle Air Conditioner Involving the Refrigerant

or Who Sell Small Containers of Refrigerant in Violation of 40 C.F.R. Part 82, Protection of Stratospheric Ozone, Subpart B (Not Dated)

Appendix X - Clean Air Act Civil Penalty Policy for Violations of 40 C.F.R. Part 82, Subpart F: Maintenance, Service, Repair, and Disposal of Appliances Containing Refrigerant (6/1/94)

Appendix XI - Clean Air Act Civil Penalty Policy for Violations of 40 C.F.R. Part 82, Subpart C: Ban on Nonessential Products Containing Class I Substances and Ban on Nonessential Products Containing or Manufactured with Class II Substances (Not Dated)

#### Clean Air Act - Mobile Sources

Volatility Civil Penalty Policy (12/1/89)

Civil Penalty Policy for Administrative Hearings (1/14/93)

Manufacturers Programs Branch Interim Penalty Policy (3/31/93)

Interim Diesel Civil Penalty Policy (2/8/94)

Tampering and Defeat Device Civil Penalty Policy for Notices of Violation (2/28/94)

Draft Reformulated Gasoline and Anti-Dumping Settlement Policy (6/3/96)

#### TSCA

Guidelines for the Assessment of Civil Penalties Under Section 16 of TSCA (7/7/80) (Published in *Federal Register* on 9/10/80. Note that the first PCB penalty policy was published along with it, but the PCB policy is now obsolete). This is a generic policy for TSCA sources. There are a series of policies that address certain specific subprograms within TSCA. They are as follows:

Record keeping and Reporting Rules TSCA Sections 8, 12, and 13 (3/31/99)

PCB Penalty Policy (4/9/90)

TSCA Section 5 Enforcement Response Policy (6/8/89), amended (7/1/93)

TSCA Good Laboratory Practices Regulations Enforcement Policy (4/9/85)

TSCA Section 4 Test Rules (5/28/86)

TSCA Title II - Asbestos Hazard Emergency Response Act (AHERA)

Interim Final ERP for the Asbestos Hazard Emergency Response Act (1/31/89)

ERP for Asbestos Abatement Projects; Worker Protection Rule (11/14/89)

Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act - Disclosure Rule Enforcement Response Policy (2/2000)

#### Safe Drinking Water Act - UIC

Interim Final UIC Program Judicial and Administrative Order Settlement Penalty Policy  
-- Underground Injection Control Guidance No. 79 (9/27/93)

#### Safe Drinking Water Act - PWS

New Public Water System Supervision Program Settlement Penalty Policy (5/25/94)

EPCRA

Enforcement Response Policy for Sections 304, 311, and 312 of the Emergency Planning and Community Right to Know Act/Enforcement Response Policy for Section 103 of the Comprehensive Enforcement Response, Compensation, and Liability Act (9/30/99)

Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-to-Know Act (1986) and Section 6607 of the Pollution Prevention Act (1990) (Amended)(4/12/01)

Clean Water Act

Revised Interim Clean Water Act Settlement Penalty Policy (3/1/95) (3/3/98)

Clean Water Act Section 404 Civil Administrative Penalty Actions Guidance on Calculating Settlement Amounts (12/21/01)

Civil Penalty Policy for Section 311(b)(3) and Section 311 (j) of the Clean Water Act (8/98)

Pilot Enforcement Approach for MOM [Management, Operation and Maintenance] Cases in Region IV (1/23/03)

RCRA

RCRA Civil Penalty Policy (6/23/03)

Guidance on the Use of Section 7003 of RCRA (10/97)

UST

U.S. EPA Penalty Guidance for Violations of UST Regulations (November 1990)

Guidance for Federal Field Citation Enforcement (OSWER Directive- No. 9610-16) (October 1993)

CERCLA

Interim Policy on Settlement of CERCLA Section 106 (b)(1) and Section 107 (c)(3) Punitive Damage Claims for Noncompliance with Administrative Orders (9/30/97)

## FIFRA

General FIFRA Enforcement Response Policy (7/2/90)

FIFRA Section 7(c) ERP (2/10/86)

Enforcement Response Policy for the Federal Insecticide, Fungicide and Rodenticide Act:

Good Laboratory Practice (GLP) Regulations (9/30/91)

FIFRA Worker Protection Standard Penalty Policy, Interim Final (9/97)

## Attachment

cc: (w/attachment)

Regional Counsel, Regions I - X

Director, Office of Environmental Stewardship, Region I

Director, Division of Enforcement and Compliance Assurance, Region II

Director, Office of Enforcement, Compliance, and Environmental Justice, Region III

Director, Office of Enforcement and Compliance Assurance, Region V

Director, Compliance Assurance and Enforcement Division, Region VI

Director, Office of Enforcement, Compliance and Environmental Justice, Region VIII

Director, Office of Civil Rights, Enforcement and Environmental Justice, Region X

Regional Media Division Directors

Regional Enforcement Coordinators, Regions I - X

Dana Ott, OGC-CCID

OECA Office Directors

ORE Division Directors

OSRE Division Directors

Bruce Gelber, Chief, EES, DOJ

Deputy and Assistant Chiefs, EES, DOJ

## **FACT SHEET**

### **Modifications to EPA's Civil Penalty Policies to Implement the Recently Published Civil Monetary Penalty Inflation Adjustment Rule**

#### **Background**

Section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note, as amended by the Debt Collection Improvement Act of 1996 (the Act), 31 U.S.C. 3701 note, requires each federal agency to issue regulations adjusting for inflation the maximum civil monetary penalties that can be imposed pursuant to such agency's statutes. Adjustments for inflation maintain the deterrent effect of penalties and further the policy goals of the underlying laws. The Act requires adjustments to be made at least once every four years following the initial adjustment.

The EPA's initial adjustment to each civil monetary penalty was published in the *Federal Register* on December 31, 1996 (61 *Fed. Reg.* 69,360) and became effective on January 30, 1997. The first penalty inflation adjustment was limited by the Act to 10% above the existing statutory provision's maximum amount. By memorandum dated May 9, 1997, EPA modified all penalty policies to conform to the Act and the 1997 rule.

On February 13, 2004, EPA published the final Civil Monetary Penalty Inflation Adjustment Rule (69 *Fed. Reg.* 7121), which became effective on March 15, 2004. Accordingly, all violations occurring after March 15, 2004 are subject to the new inflation-adjusted penalty amounts.

Because the initial adjustment was made and published on December 31, 1996, the inflation adjustment for the penalty provisions set forth in the rule was calculated by comparing the Consumer Price Index-Urban (CPI-U) for June 1996 with the CPI-U for June 2003, resulting in an inflation adjustment of 17.23 percent (subject to the rounding provisions of the Act). For example, Clean Water Act (CWA) Section 309 previously authorized judicial penalties of up to \$27,500 per day per violation; since the new rule became effective, the new maximum penalty amount is \$32,500.

#### **Civil Penalty Policies**

The attached memorandum modifies all existing civil penalty policies to conform to the final rule by increasing the initial gravity component of the penalty calculation by 17.23% for those violations subject to the new rule (adjustments to the penalty policy amounts are not subject to the rounding provisions of the Act). The memorandum amends the existing civil penalty policies, effective on October 1, 2004.

The attached memorandum also provides guidance on how to plead penalties and how to determine the new maximum penalty amounts that may be sought in administrative enforcement actions.



EPA intends to readjust the statutory maximum penalty amounts and the penalty amounts under our civil penalty policies in the year 2008 and every four years thereafter.

### **Public Interest**

A report from the Public Interest Research Group (PIRG) claimed that EPA's delay in increasing its penalties to account for inflation let polluters off the hook for millions of dollars in penalties. EPA disagrees with the PIRG report in that the inflation adjustment only goes to the statutory maximum penalty that can be assessed in any given case. In practice, agencies rarely seek, and courts rarely impose, the maximum penalty allowed. We calculate penalties after looking at a number of factors, including the economic benefit that the defendants may have derived as a result of their noncompliance and the gravity of the offense. For example, we consider whether the offense was a serious violation or whether the defendant was cooperative or recalcitrant. Those factors rarely add up to the statutory maximum. The economic benefit component of the civil penalties, which in major penalty actions is usually the most significant part of the case, is already adjusted for inflation.

## **ACTION MEMORANDUM**

**SUBJECT:** Proposed Rule  
Civil Monetary Penalties Inflation Adjustment Rule  
(Implementing the Debt Collection and Improvement Act of 1996)  
SAN 4553

**FROM:** John Peter Suarez  
Assistant Administrator  
Office of Enforcement and Compliance Assurance

**TO:** Christine Todd Whitman, Administrator

This memorandum requests your approval of the attached Proposed Rule. On June 18, 2002, the Environmental Protection Agency ("EPA") published a direct final rule with a parallel proposal in the Federal Register (67 FR 41343) to amend the Civil Monetary Penalty Inflation Adjustment Rule, as mandated by the Debt Collection Improvement Act of 1996, to adjust EPA's civil monetary penalties for inflation. In accordance with the Office of General Counsel's "Direct Final Rulemaking Guidance," we stated in the direct final rule that if we received adverse comment by July 18, 2002, we would publish a timely notice of withdrawal on or before the August 19, 2002 effective date, and then address that comment in a subsequent final action based on the parallel proposal published at (67 FR 41363). Because the Agency subsequently received one adverse comment on the direct final rule we withdraw the direct final rule on August 19, 2002. Attached is a new proposal that builds on the previous direct final rule and parallel proposal and adopts the GAO interpretation and new numbers. Please review the attached Federal Register notice containing the Proposed Rule and then sign the attached Action Memorandum to the Administrator requesting that she approve the Proposed Rule.

### **OVERVIEW**

Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990,<sup>1</sup> as amended by the Debt Collection Improvement Act of 1996<sup>2</sup> (the "Act"), each Federal agency is required to issue regulations adjusting for inflation the maximum civil monetary penalties that can be

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<sup>1</sup>(28 U.S.C. § 2461 note; Pub. L. 101-410, enacted October 5, 1990; 104 Stat. 890).

<sup>2</sup>(31 U.S.C. § 3701 note; Pub. L. 104-134, enacted April 26, 1996; 110 Stat. 1321).

imposed pursuant to such agency's statutes. The purpose of these adjustments is to maintain the deterrent effect of civil monetary penalties and to promote compliance with the law. The Act requires adjustments to be made at least once every four years following the initial adjustment.

The Act requires that agencies adjust the civil monetary penalties by the percentage increase in the Consumer Price Index ("CPI") since the last adjustment. The resulting dollar amount of the increase is then to be rounded according to the Act's rounding rules. These rounding rules have been interpreted differently by various Federal agencies. While some agencies round based on the amount of the current penalty after the increase is added, other agencies have rounded based on the amount of the increase resulting from the CPI percentage calculation. The penalties in EPA's direct final rule were rounded based on the amount of the increase resulting from the CPI percentage increase as this approach appears to achieve the intent of the Act by steadily tracking the CPI over time. Conversely, a strict reading of the Act would drive penalties up or down from year to year and, contrary to the intent of Congress, would not always track inflation. The adverse comment that EPA received from GAO involved the rounding approach. GAO commented that the penalties should be rounded based on the amount of the base (preadjusted) penalty. As stated above, the new proposal builds on the previous direct final rule and parallel proposal and adopts the GAO interpretation and new numbers. It provides for a 30-day public comment period and then the issuance of a final rule with the GAO interpretation and new numbers. The advantage of using the conventional notice and comment rulemaking eliminates any danger of a court ruling on direct final rulemaking process because any challenge (whenever it comes) would be limited to the issue of how the Act's rounding rule is to be interpreted. EPA can establish in this rulemaking the rounding rule it will use from now on and then issue immediate final rules (without a comment opportunity) in the future when it publishes future rounding rules because those rules will just be doing the math using the rounding formula adopted in this rulemaking. EPA's Office of General Counsel has concurred on this Proposed Rule.

### REGULATORY IMPACTS

We do not anticipate any regulatory impacts.

### INTERNAL REVIEW

An Action Information Form was submitted for the direct final rule for the six-tiering exercise, with a recommendation for tier 3. The Steering Committee approved the action.

### ANTICIPATED PUBLIC REACTION

The proposed rule provides a thirty (30) day comment period. After the close of the comment period and after consideration of any comments received, we will issue a final rulemaking.

### RECOMMENDATION

I recommend that you sign this Proposed Rule.

Attachment

Employees (subpart A of 29 CFR part 2602) by removing all provisions other than those dealing with outside employment. These outside employment provisions, which are now codified at 29 CFR part 4904, have been superseded by OGE's government-wide regulations. Accordingly, the PBGC is removing part 4904 from its regulations.

Because this rule involves agency management and personnel (5 U.S.C. 553(a)(2)), general notice of proposed rulemaking and a delayed effective date are not required (5 U.S.C. 553(b), (d)).

Because no general notice of proposed rulemaking is required, the Regulatory Flexibility Act does not apply (5 U.S.C. 601(2)).

#### List of Subjects in 29 CFR Part 4904

Conflict of interests, Government employees, Penalties, Political activities (Government employees), Production and disclosure of information, Testimony.

■ For the reasons set forth above, 29 CFR chapter XL is amended as follows:

#### PART 4904—ETHICAL CONDUCT OF EMPLOYEES

■ 1. The authority citation for part 4904 continues to read as follows:

**Authority:** 29 U.S.C. 1302(b); E.O. 11222, 30 FR 6469; 5 CFR 735.104.

#### PART 4904—[REMOVED]

■ 2. Part 4904 is removed.

Issued in Washington, DC this 10th day of February, 2004.

Steven A. Kandarian,  
Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 04-3246 Filed 2-12-04; 8:45 am]  
BILLING CODE 7708-01-P

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Parts 19 and 27

[FRL-7623-5]

#### Civil Monetary Penalty Inflation Adjustment Rule

**AGENCY:** Environmental Protection Agency (EPA)

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency ("EPA") is issuing this final Civil Monetary Penalty Inflation Adjustment Rule, as mandated by the Debt Collection Improvement Act of 1996, to adjust EPA's civil monetary penalties ("CMPs") for inflation on a periodic basis. The Agency is required

to review its penalties at least once every four years and to adjust them as necessary for inflation according to a formula specified in the statute. A complete version of Table 1 from the regulatory text, which lists all of the EPA's civil monetary penalty authorities, appears near the end of this rule.

**EFFECTIVE DATE:** March 15, 2004.

#### FOR FURTHER INFORMATION CONTACT:

David Abdalla, Office of Regulatory Enforcement, Special Litigation and Projects Division, Mail Code 2248A, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 564-2413.

#### SUPPLEMENTARY INFORMATION:

##### Background

Pursuant to section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. 3701 note, ("DCIA"), each federal agency is required to issue regulations adjusting for inflation the maximum civil monetary penalties that can be imposed pursuant to such agency's statutes. The purpose of these adjustments is to maintain the deterrent effect of CMPs and to further the policy goals of the laws. The DCIA requires adjustments to be made at least once every four years following the initial adjustment. The EPA's initial adjustment to each CMP was published in the *Federal Register* on December 31, 1996, at (61 FR 69360) and became effective on January 30, 1997.

This rule adjusts the amount for each type of CMP that EPA has jurisdiction to impose in accordance with these statutory requirements. It does so by revising the table contained in 40 CFR 19.4. The table identifies the statutes that provide EPA with CMP authority and sets out the inflation-adjusted maximum penalty that EPA may impose pursuant to each statutory provision. This rule also revises the effective date provisions of 40 CFR 19.2 to make the penalty amounts set forth in 40 CFR 19.4 apply to all applicable violations that occur after the effective date of this rule.

The DCIA requires that the adjustment reflect the percentage increase in the Consumer Price Index between June of the calendar year preceding the adjustment and June of the calendar year in which the amount was last set or adjusted. The DCIA defines the Consumer Price Index as the Consumer Price Index for all urban consumers published by the Department of Labor ("CPI-U"). As the initial adjustment was made and published on

December 31, 1996, the inflation adjustment for the CMPs set forth in this rule was calculated by comparing the CPI-U for June 1996 (156.7) with the CPI-U for June 2003 (183.7), resulting in an inflation adjustment of 17.23 percent. In addition, the DCIA's rounding rules require that an increase be rounded to the nearest multiple of: \$10 in the case of penalties less than or equal to \$100; \$100 in the case of penalties greater than \$100 but less than or equal to \$1,000; \$1,000 in the case of penalties greater than \$1,000 but less than or equal to \$10,000; \$5,000 in the case of penalties greater than \$10,000 but less than or equal to \$100,000; \$10,000 in the case of penalties greater than \$100,000 but less than or equal to \$200,000; and \$25,000 in the case of penalties greater than \$200,000.

The amount of each CMP was multiplied by 17.23 percent (the inflation adjustment) and the resulting increase amount was rounded up or down according to the rounding requirements of the statute. Certain CMPs were adjusted for the first time and were increased by only 10 percent without being subject to the rounding procedures as required by the DCIA. The table below shows the inflation-adjusted CMPs and includes only the CMPs as of the effective date of this rule. EPA intends to readjust these amounts in the year 2008 and every four years thereafter, assuming there are no further changes to the mandate imposed by the DCIA.

On June 18, 2002, the EPA published a direct final rule and a parallel proposed rule in the *Federal Register* (67 FR 41343). The direct final rule would have amended the Civil Monetary Penalty Inflation Adjustment Rule, as mandated by the DCIA, to adjust EPA's civil monetary penalties for inflation. EPA stated in the direct final rule that if we received adverse comment by July 18, 2002, EPA would publish a timely notice of withdrawal on or before the August 19, 2002 effective date, and then address that comment in a subsequent final action based on the parallel proposal published at (67 FR 41363). EPA subsequently received one adverse comment on the direct final rule from the General Accounting Office ("GAO"), which asserted that EPA had misinterpreted the rounding formula provided in the DCIA. Accordingly, EPA withdrew the direct final rule on August 19, 2002 (67 FR 53743).

The formula for the amount of the penalty adjustment is prescribed by Congress in the DCIA and these changes are not subject to the exercise of discretion by EPA. However the

rounding requirement of the statute is subject to different interpretations. Some agencies rounded the increase based on the amount of the current penalty before adjustment, while other agencies have rounded the increase based on the amount of the increase resulting from the CPI percentage calculation. Still other agencies first added the CPI increase to the amount of the current penalty and then rounded the total based on the amount of the increased penalty. The penalties in EPA's direct final rule were rounded based on the amount of the increase resulting from the CPI percentage increase because this approach appears to achieve the intent of the DCIA by steadily tracking the CPI over time. However, the GAO's adverse comment asserts that a strict reading of the DCIA requires rounding the CPI increase based on the amount of the current penalty before adjustment.

On July 3, 2003, EPA published a proposed rule that appeared in the *Federal Register* at (68 FR 39882), entitled "Civil Monetary Penalty Inflation Adjustment Rule," as mandated by the Debt Collection Improvement Act of 1996, to adjust EPA's civil monetary penalties for inflation on a periodic basis. EPA subsequently published a technical correction in the *Federal Register* on August 4, 2003 at (68 FR 45788) to correct errors in the language of the proposal that mistakenly referred to the proposed effective date as July 3, 2003. EPA proposed to adopt GAO's interpretation of the DCIA rounding rules and, thus, proposed to round the CPI increases in the proposed rule based on the amount of the current penalty before adjustment.

In accordance with the DCIA, EPA's proposed rule used the CPI-U from June 2002 to calculate the penalty adjustments. EPA also stated in the proposal that it intends to use this formula for calculating future adjustments to the CMPs and will not provide additional comment periods at the time future adjustments are made. EPA received comments on the proposed rule from two commenters.

One commenter supported the "greatest legal increase possible" to discourage polluters from treating the fines as just a "cost of doing business." This final rule enables EPA to impose the maximum fines provided under the law, but is not intended to address when a maximum fine is appropriate. Instead, EPA makes that decision on a case-by-case basis, and considers numerous factors in determining the appropriate penalty in each case, including the gravity of the violation

and the extent to which the violator gained an economic benefit as a result of violating the law.

Another commenter argued that any ambiguity in the rounding requirement of the statute was due to a "scrivener's error." This commenter supported an interpretation that penalties be rounded based on the amount of the increase resulting from the CPI adjustment, rather than the amount of the penalty. However, we determined after carefully considering GAO's comment and examining the practices of other agencies, that following the plain meaning of the statutory language is appropriate. As GAO's adverse comment states "[n]othing in the plain language of the statute, nor the legislative history, permits an agency to use the size of the increase to determine the appropriate category of rounding." This commenter also noted that EPA had not published this second round of adjustments within four years of the initial adjustments as set forth in the statute. EPA's earlier direct final rulemaking was delayed due to EPA's need to analyze and reconcile the potential ambiguities arising from the statutory language including review of other agencies rulemakings under DCIA and discussions with other agencies regarding their approaches to interpreting the DCIA. Prior to GAO's involvement in the process, no federal agency had assumed a leadership in providing guidance on how the DCIA rounding rule should be implemented. Since the time that GAO became involved in the process, including the submission of its adverse comment on EPA's direct final rule, EPA has worked with GAO and other agencies to resolve the appropriate interpretation of the statutory language. Finally, the commenter also suggested that all of the penalties should be adjusted from their original base and not their adjusted base. The statute does not provide for a return to the original base penalty in calculating the adjustment but provides that the adjustment "shall be determined by increasing the maximum civil penalty \* \* \* by the cost-of-living adjustment."

As discussed above, EPA's proposed rule used the CPI-U from June 2002 because EPA proposed the rule in 2003. However, since EPA is issuing the final rule in 2004 and DCIA requires EPA to use the CPI-U for June of the calendar year preceding the adjustment, the penalty adjustments in this final rule use the CPI-U for June 2003 which result in an inflation adjustment of 17.23 percent rather than the 14.8 percent adjustment in the proposed rule. Thus, to derive the CMPs for this

final rule, the amount of each CMP was multiplied by 17.23 percent and the resulting increase was rounded according to the rounding rules of DCIA as EPA proposed and is adopting in this final rule. As a result of using the June 2003 CPI-U, some of the adjusted CMPs in this final rule are different than those in the July 2003 proposed rule. However, this difference results solely from the requirement in DCIA to use the June 2003 CPI-U and application of the same rounding rules that EPA proposed in July 2003.

Under 5 U.S.C. 553(b)(B), EPA finds that there is good cause to promulgate this rule without providing for further public comment even though the rule uses a CPI-U value different than the CPI-U value used in the proposal. EPA already provided an opportunity for public comment on the rounding rules that EPA has used in this final rule and the DCIA requires that an agency use the CPI-U from June of the year prior to the adjustment. Therefore, further public comment is unnecessary because EPA has no discretion to do other than to use the June 2003 CPI-U.

#### Statutory and Executive Order Review

##### *Executive Order 12866: Regulatory Planning and Review*

Under Executive Order 12866, [58 FR 51,735 (October 4, 1993)] the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

- (1) have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;
- (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866, and is therefore not subject to review by the Office of Management and Budget.

### *Paperwork Reduction Act*

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Burden means the total time, effort, financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

### *Regulatory Flexibility Act*

The Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as (1) a small business as defined in the Small Business Administration regulations at 13 CFR Part 121; (2) a small governmental jurisdiction that is a government of a city, county, town school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. EPA is required by the DCIA to adjust

civil monetary penalties for inflation. The formula for the amount of the penalty adjustment is prescribed by Congress and is not subject to the exercise of discretion by EPA. EPA's action implements this statutory mandate and does not substantively alter the existing regulatory framework. This rule does not affect mechanisms already in place, including statutory provisions and EPA policies, that address the special circumstances of small entities when assessing penalties in enforcement actions.

Although this rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities. Small entities may be affected by this rule only if the federal government finds them in violation and seeks monetary penalties. EPA's media penalty policies generally take into account an entity's "ability to pay" in determining the amount of a penalty. Additionally, the final amount of any civil penalty assessed against a violator remains committed to the discretion of the federal judge or administrative law judge hearing a particular case.

### *Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "federal mandates" that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed a

small government agency plan under section 203 of the UMRA. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This rule contains no federal mandates (under the regulatory provisions of Title II of the UMRA) for state, local, or tribal governments or the private sector because the rule implements mandate(s) specifically and explicitly set forth by the Congress without the exercise of any policy discretion by EPA. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA. EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

### *Executive Order 13132: Federalism*

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in executive Order 13132. Thus, Executive Order 13132 does not apply to this rule.

### *Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175, entitled Consultation and Coordination with Indian Tribal Governments (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." As this rule will not have substantial direct effects on tribal

governments, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes, Executive Order 13175 does not apply to this rule.

**Executive Order 13045: Protection of Children From Environmental Health & Safety Risks**

Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the Order has the potential to influence the regulation. This rule is not subject to E.O. 13045 because it does not establish an environmental standard intended to mitigate health or safety risks. Because this action does not involve technical standards, EPA did not consider the use of any voluntary consensus standards under the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note).

**Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use**

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

**National Technology Transfer Advancement Act**

Section 12(d) of the National Technology Transfer Advancement Act

of 1995 ("NTTAA"), Public Law 104-113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards. Because this action does not involve technical standards, EPA did not consider the use of any voluntary consensus standards under the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note).

**Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations**

This action does not require any special considerations under Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994).

**Congressional Review Act**

The Congressional Review Act, 5 U.S.C. § 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*.

This action is not a "major rule" as defined by 5 U.S.C. 804(2).

**List of Subjects**

**40 CFR Part 19**

Environmental protection, Administrative practice and procedure, Penalties.

**40 CFR Part 27**

Administrative practice and procedure, Assessments, False claims, False statements, Penalties.

Dated: February 8, 2004.

Michael O. Leavitt,

Administrator, Environmental Protection Agency.

■ For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

■ 1. Revise part 19 to read as follows:

**PART 19—ADJUSTMENT OF CIVIL MONETARY PENALTIES FOR INFLATION**

**Sec.**

19.1 Applicability.

19.2 Effective Date.

19.3 [Reserved].

19.4 Penalty Adjustment and Table.

Authority: Pub. L. 101-410, 28 U.S.C. 2461 note; Pub. L. 104-134, 31 U.S.C. 3701 note.

**§ 19.1 Applicability.**

This part applies to each statutory provision under the laws administered by the Environmental Protection Agency concerning the maximum civil monetary penalty which may be assessed in either civil judicial or administrative proceedings.

**§ 19.2 Effective Date.**

The increased penalty amounts set forth in this part apply to all violations under the applicable statutes and regulations which occur after March 15, 2004.

**§ 19.3 [Reserved].**

**§ 19.4 Penalty Adjustment and Table.**

The adjusted statutory penalty provisions and their maximum applicable amounts are set out in Table 1. The last column in the table provides the newly effective maximum penalty amounts.



TABLE 1 OF SECTION 19.4.—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS

U.S. code citation	Civil monetary penalty description	Penalties effective between January 30, 1997 and March 15, 2004	New maximum penalty amount
7 U.S.C. 136l(a)(1) .....	FEDERAL INSECTICIDE, FUNGICIDE, & RODENTICIDE ACT CIVIL PENALTY—GENERAL—COMMERCIAL APPLICATORS, ETC.	\$5,500 .....	\$6,500
7 U.S.C. 136l(a)(2) .....	FEDERAL INSECTICIDE, FUNGICIDE, & RODENTICIDE ACT CIVIL PENALTY—PRIVATE APPLICATORS—FIRST AND SUBSEQUENT OFFENSES OR VIOLATIONS.	\$550/\$1000 .....	\$650/\$1,200
15 U.S.C. 2615(a) .....	TOXIC SUBSTANCES CONTROL ACT CIVIL PENALTY .....	\$27,500 .....	\$32,500
15 U.S.C. 2647(a) .....	ASBESTOS HAZARD EMERGENCY RESPONSE ACT CIVIL PENALTY .....	\$5,500 .....	\$6,500
15 U.S.C. 2647(g) .....	ASBESTOS HAZARD EMERGENCY RESPONSE ACT—CONTRACTOR VIOLATIONS.	\$5000 .....	\$5,500
31 U.S.C. 3802(a)(1) .....	PROGRAM FRAUD CIVIL REMEDIES ACT/VIOLATION INVOLVING FALSE CLAIM.	\$5,500 .....	\$6,500
31 U.S.C. 3802(a)(2) .....	PROGRAM FRAUD CIVIL REMEDIES ACT/VIOLATION INVOLVING FALSE STATEMENT.	\$5,500 .....	\$6,500
33 U.S.C. 1319(d) .....	CLEAN WATER ACT VIOLATION/CIVIL JUDICIAL PENALTY .....	\$27,500 .....	\$32,500
33 U.S.C. 1319(g)(2)(A) .....	CLEAN WATER ACT VIOLATION/ADMINISTRATIVE PENALTY PER VIOLATION AND MAXIMUM.	\$11,000/\$27,500	\$11,000/\$32,500
33 U.S.C. 1319(g)(2)(B) .....	CLEAN WATER ACT VIOLATION/ADMINISTRATIVE PENALTY PER VIOLATION AND MAXIMUM.	\$11,000/ \$137,500.	\$11,000/ \$157,500
33 U.S.C. 1321(b)(6)(B)(i) .....	CLEAN WATER ACT VIOLATION/ADMIN PENALTY OF SEC 311(b)(3)&(j) PER VIOLATION AND MAXIMUM.	\$11,000/\$27,500	\$11,000/\$32,500
33 U.S.C. 1321(b)(6)(B)(ii) .....	CLEAN WATER ACT VIOLATION/ADMIN PENALTY OF SEC 311(b)(3)&(j) PER VIOLATION AND MAXIMUM.	\$11,000/ \$137,500.	\$11,000/ \$157,500
33 U.S.C. 1321(b)(7)(A) .....	CLEAN WATER ACT VIOLATION/CIVIL JUDICIAL PENALTY OF SEC 311(b)(3)—PER VIOLATION PER DAY OR PER BARREL OR UNIT.	\$27,500 or \$1,100 per barrel or unit.	\$32,500 or \$1,100 per barrell or unit
33 U.S.C. 1321(b)(7)(B) .....	CLEAN WATER ACT VIOLATION/CIVIL JUDICIAL PENALTY OF SEC 311(c)&(e)(1)(B).	\$27,500 .....	\$32,500
33 U.S.C. 1321(b)(7)(C) .....	CLEAN WATER ACT VIOLATION/CIVIL JUDICIAL PENALTY OF SEC 311(j).	\$27,500 .....	\$32,500
33 U.S.C. 1321(b)(7)(D) .....	CLEAN WATER ACT VIOLATION/MINIMUM CIVIL JUDICIAL PENALTY OF SEC 311(b)(3)—PER VIOLATION OR PER BARREL/UNIT.	\$110,000 or \$3,300 per barrel or unit.	\$130,000 or \$4,300 per barrel or unit.
33 U.S.C. 1414b(d) .....	MARINE PROTECTION, RESEARCH & SANCTUARIES ACT VIOL SEC 104b(d).	\$660 .....	\$760
33 U.S.C. 1415(a) .....	MARINE PROTECTION RESEARCH AND SANCTUARIES ACT VIOLATIONS—FIRST & SUBSEQUENT VIOLATIONS.	\$55,000/ \$137,500.	\$65,000/ \$157,500
42 U.S.C. 300g-3(b) .....	SAFE DRINKING WATER ACT/CIVIL JUDICIAL PENALTY OF SEC 1414(b).	\$27,500 .....	\$32,500
42 U.S.C. 300g-3(c) .....	SAFE DRINKING WATER ACT/CIVIL JUDICIAL PENALTY OF SEC 1414(c).	\$27,500 .....	\$32,500
42 U.S.C. 300g-3(g)(3)(A) .....	SAFE DRINKING WATER ACT/CIVIL JUDICIAL PENALTY OF SEC 1414(g)(3)(a).	\$27,500 .....	\$32,500
42 U.S.C. 300g-3(g)(3)(B) .....	SAFE DRINKING WATER ACT/ MAXIMUM ADMINISTRATIVE PENALTIES PER SEC 1414(g)(3)(B).	\$5,000/\$25,000	\$6,000/\$27,500
42 U.S.C. 300g-3(g)(3)(C) .....	SAFE DRINKING WATER ACT/THRESHOLD REQUIRING CIVIL JUDICIAL ACTION PER SEC 1414(g)(3)(C).	\$25,000 .....	\$27,500
42 U.S.C. 300h-2(b)(1) .....	SDWA/CIVIL JUDICIAL PENALTY/VIOLATIONS OF REQS—UNDERGROUND INJECTION CONTROL (UIC).	\$27,500 .....	\$32,500
42 U.S.C. 300h-2(c)(1) .....	SDWA/CIVIL ADMIN PENALTY/VIOLATIONS OF UIC REQS—PER VIOLATION AND MAXIMUM.	\$11,000/ \$137,500.	\$11,000/ \$157,500
42 U.S.C. 300h-2(c)(2) .....	SDWA/CIVIL ADMIN PENALTY/VIOLATIONS OF UIC REQS—PER VIOLATION AND MAXIMUM.	\$5,500/\$137,500	\$6,500/\$157,500
42 U.S.C. 300h-3(c)(1) .....	SDWA/VIOLATION/OPERATION OF NEW UNDERGROUND INJECTION WELL.	\$5,500 .....	\$6,500
42 U.S.C. 300h-3(c)(2) .....	SDWA/WILLFUL VIOLATION/OPERATION OF NEW UNDERGROUND INJECTION WELL.	\$11,000 .....	\$11,000
42 U.S.C. 300i(b) .....	SDWA/FAILURE TO COMPLY WITH IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER.	\$15,000 .....	\$16,500
42 U.S.C. 300i-1(c) .....	SDWA/ATTEMPTING TO OR TAMPERING WITH PUBLIC WATER SYSTEM/CIVIL JUDICIAL PENALTY.	\$22,000/\$55,000	\$100,000/ \$1,000,000
42 U.S.C. 300j(e)(2) .....	SDWA/FAILURE TO COMPLY W/ORDER ISSUED UNDER SEC. 1441(c)(1).	\$2,750 .....	\$2,750
42 U.S.C. 300j-4(c) .....	SDWA/REFUSAL TO COMPLY WITH REQS. OF SEC. 1445(a) OR (b) .....	\$27,500 .....	\$32,500
42 U.S.C. 300j-6(b)(2) .....	SDWA/FAILURE TO COMPLY WITH ADMIN. ORDER ISSUED TO FEDERAL FACILITY.	\$25,000 .....	\$27,500
42 U.S.C. 300j-23(d) .....	SDWA/VIOLATIONS/SECTION 1463(b)—FIRST OFFENSE/REPEAT OFFENSE.	\$5,500/\$55,000	\$6,500/\$65,000

TABLE 1 OF SECTION 19.4.—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS—Continued

U.S. code citation	Civil monetary penalty description	Penalties effective between January 30, 1997 and March 15, 2004	New maximum penalty amount
42 U.S.C. 4852d(b)(5) .....	RESIDENTIAL LEAD-BASED PAINT HAZARD REDUCTION ACT OF 1992, SEC 1018—CIVIL PENALTY.	\$11,000 .....	\$11,000
42 U.S.C. 4910(a)(2) .....	NOISE CONTROL ACT OF 1972—CIVIL PENALTY .....	\$11,000 .....	\$11,000
42 U.S.C. 6928(a)(3) .....	RESOURCE CONSERVATION & RECOVERY ACT/VIOLATION SUBTITLE C ASSESSED PER ORDER.	\$27,500 .....	\$32,500
42 U.S.C. 6928(c) .....	RES. CONS. & REC. ACT/CONTINUED NONCOMPLIANCE OF COMPLIANCE ORDER.	\$27,500 .....	\$32,500
42 U.S.C. 6928(g) .....	RESOURCE CONSERVATION & RECOVERY ACT/VIOLATION SUBTITLE C.	\$27,500 .....	\$32,500
42 U.S.C. 6928(h)(2) .....	RES. CONS. & REC. ACT/NONCOMPLIANCE OF CORRECTIVE ACTION ORDER.	\$27,500 .....	\$32,500
42 U.S.C. 6934(e) .....	RES. CONS. & REC. ACT/NONCOMPLIANCE WITH SECTION 3013 ORDER.	\$5,500 .....	\$6,500
42 U.S.C. 6973(b) .....	RES. CONS. & REC. ACT/VIOLATIONS OF ADMINISTRATIVE ORDER .....	\$5,500 .....	\$6,500
42 U.S.C. 6991e(a)(3) .....	RES. CONS. & REC. ACT/NONCOMPLIANCE WITH UST ADMINISTRATIVE ORDER.	\$27,500 .....	\$32,500
42 U.S.C. 6991e(d)(1) .....	RES. CONS. & REC. ACT/FAILURE TO NOTIFY OR FOR SUBMITTING FALSE INFORMATION.	\$11,000 .....	\$11,000
42 U.S.C. 6991e(d)(2) .....	RCRA/VIOLATIONS OF SPECIFIED UST REGULATORY REQUIREMENTS.	\$11,000 .....	\$11,000
42 U.S.C. 14304(a)(1) .....	BATTERY ACT VIOLATIONS .....	\$10,000 .....	\$11,000
42 U.S.C. 14304(g) .....	BATTERY ACT/VIOLATIONS OF CORRECTIVE ACTION ORDERS .....	\$10,000 .....	\$11,000
42 U.S.C. 7413(b) .....	CLEAN AIR ACT/VIOLATION/OWNERS & OPERATORS OF STATIONARY AIR POLLUTION SOURCES—JUDICIAL PENALTIES.	\$27,500 .....	\$32,500
42 U.S.C. 7413(d)(1) .....	CLEAN AIR ACT/VIOLATION/OWNERS & OPERATORS OF STATIONARY AIR POLLUTION SOURCES—ADMINISTRATIVE PENALTIES PER VIOLATION & MAX.	\$27,500/ \$220,000.	\$32,500/ \$270,000
42 U.S.C. 7413(d)(3) .....	CLEAN AIR ACT/MINOR VIOLATIONS/STATIONARY AIR POLLUTION SOURCES—FIELD CITATIONS.	\$5,500 .....	\$6,500
42 U.S.C. 7524(a) .....	TAMPERING OR MANUFACTURE/SALE OF DEFEAT DEVICES IN VIOLATION OF 7522(a)(3)(A) OR (a)(3)(B)—BY PERSONS.	\$2,750 .....	\$2,750
42 U.S.C. 7524(a) .....	VIOLATION OF 7522(a)(3)(A) OR (a)(3)(B)—BY MANUFACTURERS OR DEALERS; ALL VIOLATIONS OF 7522(a)(1),(2), (4), & (5) BY ANYONE.	\$27,500 .....	\$32,500
42 U.S.C. 7524(c) .....	ADMINISTRATIVE PENALTIES AS SET IN 7524(a) & 7545(d) WITH A MAXIMUM ADMINISTRATIVE PENALTY.	\$220,000 .....	\$270,000
42 U.S.C. 7545(d) .....	VIOLATIONS OF FUELS REGULATIONS .....	\$27,500 .....	\$32,500
42 U.S.C. 9604(e)(5)(B) .....	SUPERFUND AMEND. & REAUTHORIZATION ACT/NONCOMPLIANCE W/REQUEST FOR INFO OR ACCESS.	\$27,500 .....	\$32,500
42 U.S.C. 9606(b)(1) .....	SUPERFUND/WORK NOT PERFORMED W/IMMINENT, SUBSTANTIAL ENDANGERMENT.	\$27,500 .....	\$32,500
42 U.S.C. 9609(a)&(b) .....	SUPERFUND/ADMIN. PENALTY VIOLATIONS UNDER 42 U.S.C. SECT. 9603, 9608, OR 9622.	\$27,500 .....	\$32,500
42 U.S.C. 9609(b) .....	SUPERFUND/ADMIN. PENALTY VIOLATIONS—SUBSEQUENT .....	\$82,500 .....	\$97,500
42 U.S.C. 9609(c) .....	SUPERFUND/CIVIL JUDICIAL PENALTY/VIOLATIONS OF SECT. 9603, 9608, 9622.	\$27,500 .....	\$32,500
42 U.S.C. 9609(c) .....	SUPERFUND/CIVIL JUDICIAL PENALTY/SUBSEQUENT VIOLATIONS OF SECT. 9603, 9608, 9622.	\$82,500 .....	\$97,500
42 U.S.C. 11045(a)&(b) (1),(2)&(3) .....	EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT CLASS I & II ADMINISTRATIVE AND CIVIL PENALTIES.	\$27,500 .....	\$32,500
42 U.S.C. 11045(b) (2)&(3) .....	EPCRA CLASS I & II ADMINISTRATIVE AND CIVIL PENALTIES—SUBSEQUENT VIOLATIONS.	\$82,500 .....	\$97,500
42 U.S.C. 11045(c)(1) .....	EPCRA CIVIL AND ADMINISTRATIVE REPORTING PENALTIES FOR VIOLATIONS OF SECTIONS 11022 OR 11023.	\$27,500 .....	\$32,500
42 U.S.C. 11045(c)(2) .....	EPCRA CIVIL AND ADMINISTRATIVE REPORTING PENALTIES FOR VIOLATIONS OF SECTIONS 11021 OR 11043(b).	\$11,000 .....	\$11,000
42 U.S.C. 11045(d)(1) .....	EPCRA—FRIVOLOUS TRADE SECRET CLAIMS—CIVIL AND ADMINISTRATIVE PENALTIES.	\$27,500 .....	\$32,500

**PART 27—[AMENDED]**

■ 2. The authority citation for Part 27 continues to read as follows:

Authority: 31 U.S.C. 3801–3812; Pub. L. 101–410, 104 Stat. 890, 28 U.S.C. 2461 note;

Pub. L. 104–134, 110 Stat. 1321, 31 U.S.C. 3701 note.

■ 3. Section 27.3 is amended by revising paragraphs (a)(1)(iv) and (b)(1)(ii) to read as follows:

**§ 27.3 Basis for civil penalties and assessments.**

(a) \* \* \*

(1) \* \* \*

(iv) Is for payment for the provision of property or services which the person has not provided as claimed, shall be

subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than \$6,500<sup>1</sup> for each such claim [The regulatory penalty provisions of this part effective on January 30, 1997 remain in effect for any violation of law occurring between January 30, 1997 and March 15, 2004.

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(ii) Contains, or is accompanied by, an express certification or affirmation of the truthfulness and accuracy of the contents of the statement, shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than 6,500<sup>2</sup> for each such statement.

\* \* \* \* \*

(FR Doc. 04-3231 Filed 2-12-04; 8:45 am)

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[FL-91-200323(a); FRL-7622-1]

### Approval and Promulgation of Implementation Plans; Florida: Southeast Florida Area Maintenance Plan Update

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

**SUMMARY:** The EPA is approving revisions to the State Implementation Plan (SIP) submitted by the Florida Department of Environmental Protection (FDEP) on December 20, 2002. This SIP revision satisfies the requirement of the Clean Air Act (CAA) for the second 10-year update for the Southeast Florida area (Dade, Broward, and Palm Beach Counties) 1-hour ozone maintenance plan. For transportation purposes, EPA is also finalizing its adequacy determination of the new Motor Vehicle Emissions Budgets (MVEBs) for the year 2015. EPA has determined that the MVEBs for the year 2015 contained in this SIP revision are adequate for transportation conformity purposes.

**DATES:** This direct final rule is effective April 13, 2004 without further notice,

unless EPA receives adverse comment by March 15, 2004. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the *Federal Register* and inform the public that the rule will not take effect.

**ADDRESSES:** Comments may be submitted by mail to: Heidi LeSane, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Comments may also be submitted electronically, or through hand delivery/courier. Please follow the detailed instructions described in Part I.B.1. through 3 of the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** Heidi LeSane, Air, Pesticides & Toxics Management Division, Air Planning Branch, Regulatory Development Section, U.S. Environmental Protection Agency Region 4, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Mrs. LeSane's phone number is 404-562-9035. She can also be reached via electronic mail at [lesane.heidi@epa.gov](mailto:lesane.heidi@epa.gov) or Lynorae Benjamin, Air, Pesticides & Toxics Management Division, Air Planning Branch, Air Quality Modeling & Transportation Section, U.S. Environmental Protection Agency Region 4, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Ms. Benjamin's phone number is 404-562-9040. She can also be reached via electronic mail at [benjamin.lynorae@epa.gov](mailto:benjamin.lynorae@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

##### A. How Can I Get Copies of This Document and Other Related Information?

1. The Regional Office has established an official public rulemaking file available for inspection at the Regional Office. EPA has established an official public rulemaking file for this action under FL-91. The official public file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Regulatory Development Section, Air Planning

Branch, Air, Pesticides and Toxics Management Division, U.S.

Environmental Protection Agency Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 9 to 3:30, excluding Federal holidays.

2. Copies of the State submittal and EPA's technical support document are also available for public inspection during normal business hours, by appointment, at the State Air Agency, Florida Department of Environmental Protection, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400.

3. Electronic Access. You may access this *Federal Register* document electronically through the Regulation.gov Web site located at <http://www.regulations.gov> where you can find, review, and submit comments on Federal rules that have been published in the *Federal Register*, the Government's legal newspaper, and are open for comment.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

##### B. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text "Public comment on proposed rulemaking FL-91" in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

<sup>1</sup> As adjusted in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101-410, 104 Stat. 890), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104-134, 110 Stat. 1321).

<sup>2</sup> As adjusted in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101-410, 104 Stat. 890), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104-134, 110 Stat. 1321).